Cambridge University Press et al v. Patton et al

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EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY PRESS, et al.,

Plaintiffs,

vs.

MARK P. BECKER, in his official capacity as Georgia State University President, et al.,

Defendants.

Civil Action File No. 1:08-CV-1425-ODE

- - -

Videotaped deposition of LAURA G. BURTLE, taken on behalf of the plaintiffs, pursuant to the stipulations contained herein, before Sharon A. Gabrielli, RPR, CCR No. B-2202, at 104 Marietta Street, 6th floor, Room 3, Atlanta, Georgia, on Friday, April 24, 2009, commencing at the hour of 9:13 a.m.

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THE VIDEOGRAPHER: This will be the videotaped deposition of Laura Burtle taken by the plaintiffs in the matter of Cambridge University Press, et al., versus Mark P. Becker in the official capacity as Georgia State University president, et al.

The date is April 24th, 2009. We are on the record at 9:13:42.

Swear the witness, please.

LAURA G. BURTLE,

having been first duly sworn, was deposed and testified as follows:

EXAMINATION

BY MS. SINGER:

Q Good morning, Ms. Burtle. My name is Randi Singer. I'm from the law firm of Weil, Gotshal & Manges. And we represent Cambridge University Press, Oxford University Press, and Sage Publications.

Could you please state your name and address for the record?

A Laura Burtle, 1542 Marbut Avenue, Southeast, Atlanta, Georgia.

Q Okay. Have you ever been deposed before, Ms. Burtle?

A No.

Q Okay. I'll be asking you some questions this morning, and you've agreed to answer them truthfully and completely. Okay?

A Yes.

Q Okay. So let's go over just a quick few ground rules. Your answers need to be verbal so that the court reporter can take them down. She can't get nods and hand gestures. Okay?

A Okay.

Q If you don't understand a question, please let me know, and I'll repeat it or rephrase it. Okay?

A Okay.

Q If you answer it, we'll assume that you have understood it; is that fair?

A Yes.

MR. ASKEW: I would not make that assumption. If she answers it, then she will be reviewing the transcript, and it may be that during her review she may find that there's a question that she did not understand.

MS. SINGER: Fair enough.

Q (BY MS. SINGER) And if you need a break at any point, please let me know and we'll take one.

Did you do anything to prepare for your

deposition today?
A Yes.
Q What did you do?
A Met with counsel.
Q When did you meet with him?
A Yesterday.
Q For about how long was that meeting?
A About two-and-a-half hours.
Q Was anybody there besides Mr. Askew?
A Yes, Ms. Swift and Hall.
Q Ms. Swift and Ms. Hall?
A Yes.
Q Okay. Did you look at any documents when you were preparing?
A Yes.
Q Okay. Did you have any conversations with anyone other than -- than counsel in preparation for the deposition?
A No.
Q Did you talk to Ms. Seamans about her deposition?
A Only that she had done it.
Q Okay. Did you search your files at any time for documents to produce in this litigation?
A Yes.

Q And when was that?

A I don't recall exactly. Whenever they were requested, and that request was sent to me to do.

Q Okay. Would that have been within the last six months?

A I think so, but I'm not certain.

Q Okay. Do you think it was calendar year 2009 or before that?

A No, probably before then.

Q Okay. Have you been asked to search them again at any point since then or just that one initial search?

A No. I was advised not to delete anything, but I have not researched.

Q Okay. And did you search your files yourself, or did someone search them for you?

A Myself.

Q What were you asked to look for?

A A list of key words.

Q Okay. And did you search email and whatever paper files you have?

A Yes.

Q Anything else?

A Papers on my local hard drive and the networked hard drive that I access at work.

Q Okay. Great. Is there any kind of automatic deletion on your emails after a certain period of time?
A No.
Q No. So you would have all of your emails going back unless you manually deleted them?
A That's correct. They're archived automatically.
Q Okay. And how far back does that archive go, approximately?
A Maybe 2003.
Q Okay. Could you briefly tell me about your educational background?
A I have an undergraduate degree from the College of William & Mary, Bachelor's degree, and I have a Master's in Library and Information Science from the University of North Carolina.
Q Okay. What year did you graduate from William & Mary?
A 1988.
Q And then did you go straight to -- for your Master's?
A No.
Q What did you do -- what did you do after you graduated from William & Mary?
A I worked in a library in between as a staff

person.

Q Okay. And where was that library?

A Washington, D.C.

Q Was that a -- was that a university, or was that a --

A Yes, Johns Hopkins School of Advanced International Studies.

Q Okay. And so you were there from 1988 until when?

A 2002.

Q What was your job responsibilities or your job description during that period?

A I was their systems librarian and I did acquisitions for a library in Beijing, China that was affiliated -- or Manjing, China that was affiliated.

Q Okay. And was that your description for the whole 14 years?

A Four years, yes.

Q Four years. 19 -- I'm sorry, I --

A Oh, I'm sorry.

Q You graduated from William and --

A I -- I left there in 1992, not 2002.

Q Oh, okay. I'm sorry. What did you do, then, from 1992 to 2002?

A 1992 to 1994 I was in graduate school.

Q Okay. And --
A 1994 I began working at Georgia State.
Q Okay. Thank you for clarifying that. I appreciate it.
So when -- what was your position when you started at Georgia State?
A I was a systems librarian and reference librarian.
Q What did that involve?
A Well, the reference was working at the reference desk answering general questions; and the systems piece, I administered a CD-ROM network and a Novell network that was used in the library.
Q And have you been at Georgia State since 1994?
A Yes.
Q Employed by Georgia State since 1994. Okay.
A Yes.
Q Has your job description changed at all during that period?
A Yes.
Q Okay. Could you walk me briefly through the positions you've held at Georgia State.
A I was the head of instruction after my initial job, and then I was the head of information

services. And in 2003, I became associate university librarian for technology services and, in 2005, associate university librarian for learning and technology initiatives.

Q Okay. How did your responsibilities, if at all, change in 2005, when you became the associate librarian for learning and technology services?

A The departments that reported to me changed.

Q Okay. How did your -- did your day-to-day responsibilities change?

A No, not beyond different reports.

Q Okay. And that's -- is that your current position?

A Yes.

Q Okay. So which departments currently report to you, as we sit here today?

A Access and media services, which includes the reserves unit; learning commons, which is the reference desk; the instruction department, the training and assessment department, and digital library services, as well as our creative manager.

Q Okay. Approximately how many people report to you?

A I believe I have six direct reports.

Q And how many reports do they have? Ballpark.

I'm just trying to get a --
A Maybe 40.
Q Okay. And who do you report to?
A I report to the dean of libraries.
Q And that's Nancy Seamans?
A Yes.
Q And before she came, you reported to Charlene Hurt?
A Correct.
Q Let's -- very briefly, the learning commons, you said, is the reference desk. Could you tell me --
A Includes.
Q -- a little bit -- includes the reference --
A Includes the reference desk. That's where they provide assistance to students, research assistance. It also includes technology assistance, all the public computers.
Q How about instructional services?
A They manage the instruction -- librarians do -- for classes, for them to do their research in particular subject areas.
Q Are those -- are those standalone classes that students would sign up for, or are those within the context of another instructor's course?
A The vast majority are within another

instructor's course.
Q Okay. And the training department?
A Training does internal staff training, as well as assessment activities.
Q And by "assessment," is that staff assessment for --
A Staff assessment, statistical reports for national organizations, service assessment.
Q Okay. And the digital library services?
A Digital library services includes the systems department that manages the hardware in the library and the Web services that manages the Website in the library.
Q Okay. And the creative manager?
A He's responsible for public relations, marketing, graphic design.
Q Who are your six direct reports?
A Denita Hampton.
Q And she -- is she --
A She's access and media.
Q Okay.
A Laloria Konata, L-A-L-O-R-I-A --
Q Okay.
A -- K-O-N-A-T-A, learning commons.
Q Okay.

A Jennifer Link Jones, training and assessment.
Q Okay.
A Doug Goans, Web development.
Q Okay.
A Rob Bustos, systems librarian; and Christian Steinmetz, creative manager.
Q Now, we learned yesterday that library support systems has been -- I think Mr. Palmour called it disbanded?
A That's probably pretty accurate.
Q Okay.
A I believe he's the only employee left.
Q Okay. When did that happen?
A I believe the completion was in April of this year.
Q Do you know why that was disbanded?
A There's an organizational review going on in IS&T, information systems and technology, that that's a unit of and some changes at the Board of Regents that affected all of the positions in that unit.
Q Okay. Who -- who currently performs the services that LSS used to perform for the library?
A They -- they -- one of their main responsibilities was managing our catalog, as well as

the catalog of 22 other libraries, and that function has been moved to the Board of Regents in Athens. They also were responsible for working with our DSpace institutional repository, our ETD service, electronic thesis and dissertations, and the EReserve system. We are in the process of migrating the repository and the ETDs to a commercial-hosted system, so nobody is doing that anymore.

Q Okay.

A And the reserve system, the server contact has been removed into the server unit in IS&T.

Q And who is your contact in the server unit at IS&T?

A Right now I'm still working through Jim Palmour as an intermediary. Behind him is Keith -- I don't think I know Keith's last name -- Keith in the server unit.

Q Okay. Do you know if the plan is ultimately for Keith in the server unit to take over Mr. Palmour's responsibilities?

A I do not know.

Q Okay. Do you know who would know that?

A The unit is part of university academic technology services, which is run by Mike -- Michael Russell, who reports to J.L. Albert.

Q Okay. Have you ever had any formal training in copyright?
A No.
Q Do you have the power to hire or fire any of your direct reports?
A Yes.
Q Do you have the power to do both?
A Yes.
Q Okay. Do you control any lines in the university budget?
A No.
Q Okay. How are the budget responsibilities for the library apportioned?
A The dean of libraries, in consultation with the library academic officer, manage the budget. Money might be allocated, but it's not controlled.
Q Do you control any of the -- do you -- strike that.
Do you have any input into how the library budget is allocated?
A Yes.
Q Could you tell me briefly which areas you have input into?
A The two library -- associate university libraries, as well as the dean of libraries and the

college administrative officer make decisions about the budget allocations jointly.

Q Okay. What is the current library budget?

A Around $11 million.

Q And approximately how much of that 11 million is allocated to the six areas under your umbrella?

A I don't think I can answer that.

Q Okay. Approximately, if you -- if you know or if you're able to take a broad swath at, how much of that is for the access and media piece?

A It would be for the staff in access and media almost exclusively.

Q Okay.

A I -- approximately ten staff would be my estimation. I'm not sure.

Q Okay. And what would that translate to in -- very roughly in budget terms?

A $250,000.

Q Okay.

A Roughly.

Q Roughly. That's -- I'm not going to hold you to it.

How about for the physical part of the reserves, the actual servers?

A The server is paid for out of the IS&T. The library does not pay for the server.

Q Okay. And the -- the labor of actually put -- uploading things on to the ERes system, is that IS&T, or is that out of access and media?

A That's out of access and media.

Q And those would be those ten staffers that we just talked about?

A Primarily four of them.

Q Which four is that?

A That would be Denise Dimsdale, Marjorie Denise Dimsdale, Cory Schlotzhauer, Malia Cargile, actually -- actually, I think those are the three primaries, so three.

Q Okay. Who does now the actual scanning of materials, if a faculty member brings in a book, who would actually do the scanning?

A One of those three.

Q One of those three. Do you have the scanners in the library?

A Correct.

Q What are the different methods available to instructors at GSU for distributing course reading material?

A I -- I wouldn't know the full extent of that.

Q Okay. What -- which ones are you aware of?

A They can put things on reserve.
Q Okay.
A They can require students to buy textbooks. Those are the two that I'm most intimately familiar with and that I've actually talked to a faculty member about them.
Q Fair enough. And when you say "reserve," are you talking about hard copy, actually put the books behind the counter reserve, or are you talking about EReserves?
A Both.
Q Are you familiar with the uLearn system?
A Yes.
Q What -- what can you tell me about the uLearn system; what is it?
A It's a course -- a course management system.
Q Do you have any responsibilities for that?
A No.
Q Do you have any involvement with uLearn?
A No.
Q How about Coursepacks? Are you aware -- are you familiar with a Coursepack?
A I know what a Coursepack is, yes.
Q Okay. What's a Coursepack?
A Coursepack is a collection of readings that a

commercial vendor sells to support students in a course.

Q Do you have any responsibility for Coursepacks?

A No.

Q Who would have responsibility for Coursepacks, as you've described them?

A I believe Jim Palmour has offered Coursepacks in a small sense. Beyond that, I don't know.

Q Do you have any knowledge of how many professors take advantage of Coursepacks?

A No.

Q Do you have any familiarity with how many professors take advantage of the uLearn system?

A No.

Q How about how many professors take advantage of reserves, either hard copy reserves or electronic reserves?

A I don't know a number.

Q Do you have a sense of what the percentage of professors might be?

A No.

Q Okay. How many professors are there at Georgia State?

A I believe around a thousand, but I don't know.

Q Okay. Do you think -- is your sense that more than half of them would use the reserve system?

A I don't sense that, no.

Q Okay. Do you have a sense of how many of them take advantage of hard copy reserves as opposed to EReserves?

A No. We have very few hard copy reserves.

Q Okay. So more -- more professors would take advantage of EReserves then of the hard copy reserves?

A Of the professors that use reserves, that would be true.

Q Okay. Do you have any sense of whether that has changed at all in the time you've been at Georgia State University?

A Yes.

Q And would it be fair to say that the number of professors who use EReserves has increased in the time you've been at Georgia State University?

A Yes.

Q Okay. Is there any preference amongst the -- are -- strike that.

Are you aware whether there's any preference amongst the administrators at Georgia State University for the use of one system over another, whether it's

uLearn or EReserves --
A No.
Q -- Coursepacks?
A (Shakes head negatively.)
Q Is there any preference amongst faculty or instructors that you're aware of?
A No, I wouldn't know that.
Q How about in the library; what's -- what's the library's preference for which system professors should use?
A I don't believe we pressure faculty to use one system or another.
Q Okay. In your experience, are there any advantages or disadvantages to using EReserves over any of the other electronic course management systems?
A I'm sorry, I don't understand the question.
Q Well, okay. Fair enough. Let's take a step back.
Can you describe for me briefly what EReserves is?
A EReserves is a way of providing reserve course reading to students electronically.
Q And when you say "reserve course reading," what do you mean by that?
A Items professors choose to have their

students read as part of their course work.

Q Would those items be required reading or supplemental reading?

A I believe they're usually supplemental, but that's not something we ask the faculty when they put something on reserve.

Q Would you have any way of knowing whether a particular reserve course reading was supplemental or required?

A No.

Q What is your understanding of what supplemental reading is?

A Something that's not required but is recommended for a student to achieve their learning outcomes.

Q In your experience, do students generally read supplemental readings?

A Some.

Q And how would you define required reading?

A Something a student is required to read for the course.

Q Okay. Are you familiar with the Copyright Clearance Center?

A Yes.

Q What's the Copyright Clearance Center?

A It is an organization that provides the opportunity to pay royalty payments for readings, for electro- -- or -- well, we use it for interlibrary loan. That's my familiarity with it.

Q What is interlibrary loan?

A Where we share materials that we own with other schools for their students to use -- or really other libraries, not other schools.

Q What's the distinction you're drawing between other libraries and other schools?

A It might not be a university.

Q Oh, okay. And how do you use CCC in conjunction with interlibrary loan?

A There are standards agreed on within the interlibrary loan community for when materials may be shared without paying a royalty and when the royalty payment is required. That's the extent of what I know. I have not been involved in interlibrary loan directly.

Q Have you ever had occasion to interact with anybody at CCC?

A No.

Q And is that true for your entire career or just Georgia State?

A Entire career.

Q Okay. Does Georgia State have any

interaction with the Copyright Clearance Center with regard to licensing for EReserves?

A No.

Q Does anyone at Georgia State University have any interaction with CCC for the licensing of Coursepacks?

A I don't know anything about that.

Q Okay. Are you aware of whether anyone at Georgia State University has any interaction with CCC for any other kind of licensing, other than interlibrary loan or Coursepacks?

A I'm not aware, but I wouldn't know.

Q Okay. Is there any funding in the library budget to pay licensing fees?

A There is funding to pay licensing for database access. We license an enormous number of databases and electronic journals.

Q Okay. Approximately how much, either in numbers or percentages, of the library budget is for licensing of databases or electronic journals?

A I don't know specifically. Probably half the -- I believe the library materials budget is approximately $5 million. I may be off on that. 4 to 5 million. And I would estimate at least half of that is for licensing, but I -- I don't know that directly.

Q And when you say "licensing," you're talking about licensing databases and electronic journals?

A Correct.

Q And when -- are any of these licensed databases or electronic journals used for the reserve course reading?

A Yes.

Q Is there readings used in the electronic course readings that are not licensed databases or electronic journals?

A Yes.

Q Do you have a sense of how much on the EReserve system is not licensed databases or electronic journals?

A I would estimate 40 to 50 percent, but I don't know -- I don't know the exact number.

Q Okay. Do you know whether the GSU library has ever considered taking a license from CCC, other than for interlibrary loan?

A Not that I'm aware of.

Q Let's take a look at a document Bates numbered Georgia State 926.

MR. ASKEW: Have you got an exhibit number on that?

MS. SINGER: Okay. I believe this is

going to --

MR. ASKEW: Exhibit number?

MS. SINGER: This is going to be Exhibit P-72.

MR. ASKEW: Exhibit 72.

MS. SINGER: That's why I was handing it to you. I'm sorry.

(Whereupon, there was a discussion off the record.)

(WHEREUPON, Plaintiffs' Exhibit 72 was marked for identification.)

Q (BY MS. SINGER) Ms. Burtle, you have in front of you what's been marked as Plaintiffs' Exhibit 72. It bears the Bates stamp Georgia State 926. Are you familiar with this document?

A Yes.

Q Okay. Could you describe what P -- P-72 is?

A It's an email that said that there's attached information about how much Georgia State has paid to the Copyright Clearance Center.

Q Okay. And that's an email dated May 12th, 2008, from Carmen Newton to Charlene Hurt in which you are CC'ed?

A Correct.

Q Okay. Who is Carmen Newton?

A The library administrative officer.

Q Okay. Do you know why she was sending this information?

A I do not.

Q Okay.

MS. SINGER: If you would mark this as P-73, please.

MR. ASKEW: Exhibit 73?

MS. SINGER: Yes.

(WHEREUPON, Plaintiffs' Exhibit 73 was marked for identification.)

Q (BY MS. SINGER) Ms. Burtle, you have in front of you what's been marked as P-73. And Plaintiffs' Exhibit 73 is Bates stamped Georgia State 824. It's an Excel file entitled "GSU Cost '98 to Pres" -- P-R-E-S -- ".xls."

And if you look on P-72, the attachment to that document is "GSU Cost '98 to Pres.xls." Do you see that.

A Yes.

Q Okay. Have you ever seen Plaintiffs' 73 before?

A Apparently, since I was copied on this email.

Q Can you tell us what P73 is, please?

A It's a spreadsheet showing payments to the Copyright Clearance Center.

Q Okay. And if we look on the last page of P73, the total at the bottom there is $18,905.42. Do you see that?

A Yes.

Q Okay. And that's, based on the title of the spreadsheet, from 1998 to probably sometime in early 2008?

A Yes. Although it doesn't go back to 1998 -- oh, never mind. It does.

Q Are you aware -- if you look at the -- the fourth column of the last page appears to be a description. And we see at the top about $3,287.91 looks to have been from ILL. Is that interlibrary loan?

A Yes.

Q Okay. So that's what we were discussing, the fees paid to CCC for -- for interlibrary loan?

A Correct.

Q And then the bottom section has -- the description entries are copyright royalties, executive leadership, copyright approval, copyright fees. Are you familiar with what those payments would have been for?

A No.

Q Who would be familiar with that?

A Well, whoever entered them.
Q Do you know who that would have been?
A I don't know. The last column would indicate, but I don't know the key that goes with those codes.
Q Okay. You anticipated my next question. To go back to P-72 for a moment, the email says, "Here's the information you requested. Lee pulled the information out of Spectrum from 1998 to present." Who is Lee?
A Lee is the library business manager.
Q Okay. And what is Spectrum?
A Spectrum is the university's financial system.
Q Do you have access to Spectrum?
A No, I do not.
Q Do you have any opinion about whether approximately $19,000 paid to CCC over a period of ten years is a large amount, a small amount?
A I have no context to answer that.
Q Okay.
MS. SINGER: Let's -- let's mark this Exhibit 74, please.
(WHEREUPON, Plaintiffs' Exhibit 74 was marked for identification.)

Q (BY MS. SINGER) Ms. Burtle, you have in front of you what's been marked as Plaintiffs' Exhibit 74. It bears the Bates stamp Georgia State 906. Are you familiar with this document?
A Yes.
Q What is P-74?
A It is an email from me to Sheryl Williams.
Q Who is Sheryl Williams?
A She is interlibrary loan librarian.
Q And it looks like Sheryl Williams was writing to you on May 14th, 2008, and she says, "Well, sorry, I didn't get as far as I thought I would on their Web pages." And then she goes on to show you a link to www.copyright.com/ccc. Do you see that?
A Yes.
Q Is that the Copyright Clearance Center?
A As far as I know, yes.
Q Okay. Do you know what Sheryl Williams was looking for, had you given her any instructions?
A I asked her to find out what the annual copyright license fee for academic -- they have an academic package, something they sell.
Q Okay. Where does this inquiry stand today?
A The CCC refused to respond to us on the basis of this lawsuit.

Q Okay. Was there any other discussions of it, other than this email chain?
A No. She contacted them, and they refused to -- their lawyer called.
Q Okay. What did you do with that information? Did you communicate to anyone?
A I don't recall.
Q Okay. Do you recall why you asked Sheryl Williams to investigate this?
A Not specifically, but I'm sure it was a result of reading the Complaint and wanting to get all of the information I could.
Q Okay. In your opinion, did GSU need a license from CCC?
A No.
Q Then why would you ask her to look into it?
A Because the Complaint indicated that they thought maybe we did need one, so I wanted to have all of the information about what that meant.
Q Okay. And what's the basis for your opinion that GSU did not need a license from CCC?
A Because we've been paying individually, and it didn't seem to me that that was a -- from what I knew of the academic license, it would not cover much of what we used; and it did not seem appropriate, as

much of what we use, particularly in EReserves, is fair use. There's no need to pay a license for it. So having a blanket license would be a waste of our money.

Q Well, when you say much of it was licensed anyway, what do you mean by that?

A The electronic databases and journals.

Q Okay.

A Particularly the journals.

Q How did you -- strike that.

You said much of your use was fair use. What do you mean by "fair use"?

A It was use that was educational and it fell within the guidelines of the copyright law that defined fair use.

Q Okay. Well, we'll come back to that.

A I'm sure we will.

Q How did you become aware of the CCC's blanket license?

A They sent out advertising.

Q When was that? Do you remember?

A No. But whenever they started offering to academic libraries is when they started advertising.

Q Okay. Are you aware of any other university's library experience -- university library's experience with the CCC blanket license?

A Yes.

Q And which universities is that?

A Hofstra, and I'm aware the University of Texas decided, but I'm not aware of their experience once they did. And the University of Pennsylvania, I believe, is the other one that I've read about.

Q Okay. How did you come to be familiar with those universities' experiences with CCC's blanket license?

A I was sent something about Hofstra's license, and the other two published in a -- a library publication that was distributed, they had a -- two articles about their experiences with CCC.

Q Can you tell me generally what your understanding is of Hofstra's experience with the CCC blanket license?

A They found it to be not cost effective.

Q Do you know why they found it to not be cost effective?

A I don't recall what their reasoning was.

Q What's your general understanding of the University of Texas's experience?

A All I know is that they decided to purchase a license. I know nothing about what came after that.

Q Okay. How about the University of

Pennsylvania?

A I believe they found it expensive, but I don't remember the details of the article.

Q Okay. Could you describe briefly the library's role in the ERes system?

A Could you clarify the time periods you're talking about?

Q Well, let -- let's start with as we sit here today.

A Today. The library is responsible for accepting requests from faculty members to put things on reserve. They're responsible for searching for electronic versions to link to. Failing that, they're responsible for identifying -- or locating the print version in the library and scanning it. They're responsible for creating the course page that students use to access the material. They're responsible for providing the password to access the course page to the instructor. I think that covers it.

Q Okay. How is that -- strike that.

Are the responsibilities that you just listed, as we sit here today, different than the responsibilities at the beginning of the current semester, spring 2009?

A Yes.

Q How are they different?

A We were not systematically searching for an electronic version to link to at the beginning of 2009, of spring 2009.

Q Any other differences?

A At some point in the last six months, we took over the scanning operation from Jim Palmour into the library, but I do not recall exactly when that was.

Q Okay. So other than taking over the scanning and other than now you search for the electronic version, are there any other differences in the process?

A In the -- well, from the faculty point of view, but the library receives -- the faculty member is required to -- to complete a fair use analysis for each item that is -- that is requested for reserve. And the form that they submit, they do indicate by what rationale this is legitimate to put on electronic reserves. So it falls under fair use or they own the copyright to it personally; it's course notes or something like that. It's public domain. So we -- we receive that information, which we did not receive before.

Q What do you do with that information?

A It's saved.

Q Saved how?

A It's -- it comes in through an email form and it's saved in the email system.

Q Approximately when did that change take place?

A Within two or three weeks after the USG copyright policy was enacted.

Q Do you remember about --

A Sometime in the middle of the semester. I don't remember exactly the date.

Q Okay.

A And the checking of a link began before the new Web forms went up that required the faculty to indicate...

Q Okay. So today the -- how do the requests come in from the faculty? What form?

A The form that we have created on the library Website.

Q Okay. So it comes in, it's an electronic version. Do you ever get paper versions of the form, or all the requests come in electronically now?

A The vast majority come in electronically. I'm not aware that we're getting any in print, but I wouldn't --

Q Okay.

A It's possible.

Q There's always a few who refuse to deal with the computers.

Okay. So what does the library do when it receives the electronic form?

A It checks to see if the item is available electronically.

Q And how -- what does that entail?

A We use a tool available to us on our Website called a citation linker or the electronic journal locater that -- or our catalog. There are multiple ways we can identify whether something is available electronically through one of our licensed databases, so we check all of those. And if it is available, we create what's called a open URL or a persistent link to use for students to access.

Q Okay. So if you get a request, and you -- you check all of those available tools and the requested reading is not available, what does the library do next?

A Checks to see if we have the item in a paper format.

Q How would you do that?

A Look in the catalog.

Q If the work is in the catalog, then what happens?

A A student assistant retrieves it from the shelf.

Q And then what?

A And it is brought down to the reserves unit, where the section is scanned and then entered into the EReserve system. And if any questions come up while they're scanning it, like if something seems off, they'll contact me or the dean of libraries with questions.

Q Has that happened, has anyone contacted you with questions because something seems off?

A Yes.

Q How many times has that happened?

A It's happened once since our new policy went into effect.

Q Can you tell me about that incident?

A They thought that the material being scanned was far too much and so they contacted me.

Q How much was -- were they requesting?

A A lot of a book.

Q When you say "a lot" --

A Most of it.

Q Most of it.

And what did you do upon receiving that

question or inquiry?

A I asked the staff member if they had spoken to the faculty member, and they said they had told them no. And I said, "Did they accept that?" And they said, "Yes."

And I said, "Well, if they give you any trouble, please refer them to me and I'll either speak to them or, if need be, I'll refer them to legal."

Q Okay. Did you hear anything else about that incident?

A No.

Q Do you know how much of the book ultimately ended up on the EReserve system?

A None of it.

Q None of it. Do you know who the professor was?

A No.

Q Do you know what department it was from?

A No.

Q Do you know what the book was?

A No.

Q Who was the staff member who came to you with questions?

A Denise Dimsdale.

Q Am I correct in -- I think you said the student assistant is the person who retrieves the book and brings it to the reserves unit?

A Yes.

Q And those students are current GSU students?

A Correct.

Q Who does the actual scanning of the book? Would that be the student assistant?

A I'm not certain. I believe it's the staff.

Q When you say "staff," who do you mean?

A The people who work in the reserves unit; the three names I gave you earlier.

Q Okay. So you think one of those three is responsible for all of the scanning for the EReserve system?

A I think so.

Q Who would know that for sure?

A Denise Dimsdale.

Q Okay. If the book is in the catalog, it goes automatically to the reserves unit, there's no other oversight from the library in terms of copyright compliance?

A No.

Q Okay.

A I'm not sure that there's a need for copyright compliance checking when a book goes from the shelf to the reserves unit.

Q I'm sorry?

A I'm not sure I'm understanding your question.

Q I'm sorry. Let me -- let me withdraw that question.

When the request comes in and you -- you -- is there any point during which there's a check for copyright compliance from the library?

MR. ASKEW: I'll object to the form of the question --

MS. SINGER: Okay.

MR. ASKEW: -- as being vague as to what you mean by copyright compliance.

MS. SINGER: Okay.

Q (BY MS. SINGER) Why don't we take a step back, then.

Let's look at what was previously marked as Plaintiffs' Exhibit 19.

MR. ASKEW: Do you know which deposition this was used in?

MS. SINGER: It was Nancy Seamans', I think.

Q (BY MS. SINGER) Ms. Burtle, are you familiar with the Plaintiffs' Exhibit 19?

A Not directly, no.

Q When you say "not directly," are you generally aware of what this -- this form is?
A It looks like an old form, yes.
Q Okay. So am I correct, then, that Plaintiffs' Exhibit 19 is not the form that's currently used for faculty to request materials to be placed on the EReserve system?
A Yes, you are correct.
Q Okay. Do you know when Plaintiffs' Exhibit 19 stopped being the form that was used?
A I cannot date this.
Q Okay. Do you know who created Plaintiffs' Exhibit 19?
A No.
Q Was Plaintiffs' Exhibit 19 the form that was in use when you became responsible for the access and media department for EReserves?
A I don't know.
Q Who would know that?
A Probably Denise Dimsdale.
Q Okay. Was Denise there when Georgia State first began using the EReserve system?
A Yes.
Q Would she have been either involved with or responsible for creating the forms and the procedures?

A Probably involved with. I don't know how much responsibility she had for it.
Q Okay. Who -- do you know who would have been responsible?
A Probably her direct supervisor at that point.
Q Were you -- were you responsible for the access and media department when EReserves first began to be used at Georgia State University?
A No.
Q No. Who was -- at what point did you become responsible for the EReserve system?
A In 2005, when I moved into that position, to have that unit reporting to me.
Q Okay. I'm going to show you what has previously been marked as Plaintiffs' Exhibit thirty -- it's been marked both as Plaintiffs' Exhibit 21 and then somewhat more legibly as Plaintiffs' Exhibit 37. I have -- this is the official marked version of 21.
MS. SINGER: Do you have the clean 37? Do you have any other copies?
MR. ASKEW: I'm not sure this exhibit is legible. I -- I certainly can't read most of it.
MS. SINGER: I know, that's -- I believe that's why we remarked it as 37 yesterday.

So I don't know if you have in your pile 37.
Can we go off the record for a moment just to -- do we need to change the tape anyway?
THE VIDEOGRAPHER: Yes.
MS. SINGER: Okay. So let's go off the record and change the tape.
THE VIDEOGRAPHER: Off the record at 10:08:50.
(Whereupon, there was a brief recess.)
THE VIDEOGRAPHER: This is Tape 2, we are back on the record at 10:24:34.
Q (BY MS. SINGER) Okay. Ms. Burtle, I am handing you what has been previously marked as Plaintiffs' Exhibit 37, which is a little bit more legible, I think.
A Yes.
Q Are you familiar with Plaintiffs' 37?
A Yes.
Q What is Plaintiffs' 37?
A This is a collection of the new Web pages that we are using in the library for electronic reserves requests -- or for all reserves requests.
Q Okay. So let's look at the first page of Plaintiffs' 37. Can you tell me what we're looking at?

A This is the initial page that comes up for a professor to request materials to go on reserve, with instructions.

Q Okay. So it says, "Before submitting a reserve request, you must determine under what circumstances each item can be placed in electronic reserves." It says, "Check to see if the library already has a license for the electronic version," number 1.

Is the library doing that, or is the professor?

A The library is doing it. We ask the professor to do it with no real expectation that they will.

Q Okay. And then instruction number 2 is, "Determine if the item is in the public domain." Is that something that you expect the professor to do, or is that something that the library will help out with?

A We will certainly help with any of this.

Q Okay. How -- if a professor wanted help, how would they get it?

A They would most likely contact the reserves unit, who would refer them to the subject liaison that their department falls under. Every department has a subject librarian who works with them and that librarian would likely be the person to help them.

Q Would that librarian have any formal copyright training, do you know?

A They will have been trained by legal here. Beyond that, I will not -- I do not know. It would vary.

Q Do the personnel in the reserves department to whom the faculty would initially be referred, do they have any formal copyright training?

A The training that was provided here, but not -- beyond that, I wouldn't know.

Q What -- what kind of training was provided at Georgia State University?

A When the new Board of Regents' copyright policy was enacted, the legal department, Cynthia, came over and went through the copyright policy with us, the fair use checklist, other copyright, legal copyright things that might come into play, like the TEACH Act that we don't deal with directly, but just so if faculty came, we would know what they were talking about. And they -- she that for all the people who work in the reserves unit.

Q And that was -- would that be all -- I think we talked about ten staff members?

A No. It would be all the -- the ten staff members work in access and media services. The reserves unit is the three other -- three individual staff members, their supervisor was also there, I was there, the dean of libraries was there, some other interested people were there as well.

Q How about the student assistants; were they there?

A No.

Q When did this training done by Ms. Hall take place, approximately?

A If that policy was enacted a month, six weeks ago, maybe two weeks after that.

Q So would that be sometime in late February or early March, does that sound about right?

A I honestly don't remember when it happened. It's been a busy semester, but sometime during the semester.

Q Fair enough. How long did the training last?

A I think it was approximately two hours.

Q What form did the training take?

A Presentation and questions.

Q Other than the two-hour training by Ms. Hall, was there any other copyright training given to the staff at GSU, any other copyright training?

A I'm not aware of other formal training. I have met with them since to reinforce what we -- what we learned, but not in a formal training setting.

Q Okay. So prior to this training by Ms. Hall, was there any formal copyright training for the library staff at GSU?

A Not that I'm aware of. Let me edit that.

Q Please.

A The liaison librarians, the subject librarians have been becoming increasingly familiar with scholarly communications issues, open access repositories and things like that. And I do believe they did have some training over last summer when they were focusing on that, or it might have been two summers ago. I'm not sure who did the training. I believe they were outside individuals.

Q Okay. Did anyone from the reserve staff attend that training?

A That was specific to the subject librarians.

Q So, no; no one from the reserve staff went?

A Not that I'm aware of.

Q Okay. Did you, yourself, attend that training?

A No.

Q So other than that training for the -- the subject liaisons last summer, approximately, has there been any other formal training by GSU, any other formal copyright training offered by GSU to the library staff?

A Not that I recall.

Q Okay. You mentioned that you have followed up since Ms. Hall's training with the reserve staff. On approximately how many occasions have you followed up informally with them?

A I don't know. Five, ten. I mean, I meet with them regularly.

Q Okay. Can you tell me in general terms what those interactions have been?

A Well, we've gone over the policy again.

Q Okay.

A We have redeveloped our entire Website, as well as our process and our work flow for doing reserves. So we have a lot of discussion about how we interact with faculty, how we make sure we understand the fair use checklist, what might set off alarm bells in -- in their head that might make them contact me or legal if they have questions.

There's been a lot of work redoing the work flow and the practice of what we do, so there have been a lot of meetings talking about that; some of it directly related to copyright or specifically fair use, others more work flow, personnel decisions.

Q Who's -- who's responsible for designing these new work flow and these new systems?

A They're primarily being designed by Denita Hampton, Denise Dimsdale's boss.

Q And Denita Hampton reports to you, I think you said?

A Correct.

Q So ultimately, you would be responsible for those?

A Yes.

Q How much day-to-day involvement do you have in -- in designing these processes?

A I do not have day-to-day involvement.

Q Okay. Do you approve the systems before they're put into place?

A I think it's fair to say yes at this point, because we're changing things so much, they're coming to me with their suggestions and how they're planning to do things and I'm saying yes or no or asking questions.

Q Okay. Do I take it from your answer that, generally, that's not been the case when new systems or processes are designed by the reserve staff?

A New systems and processes haven't really been a regular occurrence, so probably the last time they

changed, I was not responsible for that unit.
Q Okay. You mentioned that some of the discussions you've had would be about what might set off alarm bells in -- in their heads. What -- what would set off alarm bells, or what should set off alarm bells?
A I believe the primary thing that they are going to pick up on is -- is excessive amounts of material from a single source.
Q And what do you mean by "excessive"?
A Well, they're used to one chapter, 20 percent, that's what they worked with prior to change -- changing the policy. Well, we're not looking at those numbers now. I think anything much more than that, they're going to ask questions and they're going to refer. It doesn't necessarily mean it's going to be ruled right or wrong, but I think those are the kinds of things that are going to set off alarm bells for them. Things they've always had issues with, you know, somebody tries to put an entire book on reserve, somebody -- those are probably the major ones that come up. They're aware of other things, but those are the ones that come up.
Q In your opinion, could an entire book ever be posted on EReserves and qualify as -- as fair use?

A Yes.
Q And what circumstance would that be?
A A book in the public domain.
Q Okay. Other than a book in the public domain, can you envision any other circumstances in which it would be, in your opinion, fair use to -- to put an entire copyrighted book on the EReserve system?
A I can envision orphan work circumstances where that might be considered fair use generally. I would not do it in the library, though, so I don't -- we don't have the staff or personnel to research orphaned copyrights, so we would not do that.
Q Okay. How about 90 percent of a copyrighted work?
A I can't really answer that question. The faculty member knows what's in the book and would know what's fair use. It seems unlikely, but I -- I can't say yes or no categorically without having subject knowledge of what's in the book and what's in the field, so...
Q Okay. So let's say a faculty member fills out a form and they're telling you that it's fair use but it's 80 percent of the book. What would happen?
A The reserves unit would question it, they would talk to me. I would probably talk to the faculty

member first, and if they insisted that this was fair use, I would refer them to legal. If legal said it was fair use, I would go ahead. But I think that's a -- a legal decision, not a decision the library would make.

Q Okay. What about 70 percent; what would happen?

A Anything that sets off an alarm, that's the process that's going to happen.

Q And you said the alarm is anything above 20 percent?

A Could be something below 20 percent if it's a very short work or something. It's -- it's a case-by-case basis. I mean, this -- this is not an across the board this is what we do, it's a case-by-case basis, so...

Q How many excerpts are there up on EReserves, approximately?

A There -- there are approximately, generally between 3,500 and 4,000 listings, they're not all excerpts.

Q Okay. Fair enough. Okay. Let's go back to Plaintiffs' Exhibit 37. The third instruction on the first page of P37 is, "Use the Board of Regents fair use checklist to determine" if you use -- "if your use of the item" --

A Whoops.
Q -- "for the course is considered fair use. Print and save a copy of the completed checklist for your records."
And then I take it by the underlining of "fair use checklist," that's a link to the actual checklist on the Website?
A The checklist on the Board of Regents' Website.
Q On the Board of Regents' Website, okay. Is the -- Plaintiffs' Exhibit 37, the form we're looking at, this looks like a screen shot of the Georgia State University Web page; is that correct?
A Georgia State University library course reserves page.
Q Okay. And that -- if you know, where is the library course reserves Website hosted?
A On the library Web server.
Q And the library Web server is where?
A In the library.
Q Okay. So the library actually controls its Web server --
A Yes.
Q -- and its -- its pages?
A Yes.

Q Okay. Where do items that are posted on the EReserve system, what server do those live on?

A Those live on the EReserve, the EReserve server, Docutek ERes server.

THE WITNESS: Docutek ERes server.

Q (BY MS. SINGER) Is the Docutek ERes server part of the GSU library servers?

A No.

Q Is that part of the Board of Regents' servers?

A No. That's Georgia State University servers.

Q Okay.

A Centrally hosted.

Q Centrally hosted by Georgia State --

A Centrally managed by the IS&T, the central campus computing.

Q So the actual Docutek ERes servers are hosted by Georgia State University?

A Correct.

Q If you -- if someone from the reserves department changes an entry on a E-Reserves course page, where -- which server are they changing an entry on, do you know who's --

A The ERes server.

Q The Georgia State University ERes server?

A Yes.

Q Okay. I apologize for this. That's very complicated.

Now, instruction number 3 on the first page of P-37 says, "Print and save a copy of the completed checklist for your records." Do you see that?

A Yes.

Q Does the library ever see the checklist -- the fair use checklist filled out by the faculty members?

A No.

Q Does the library have any systems or processes in place to in -- inquire whether the faculty member has, indeed, completed the fair use checklist?

A By clicking on "I agree" on this page, they are indicating that they have done what they needed to do, including the fair use checklist, if one of the other criteria did not apply.

Q Okay. But nobody in the reserves department is going to check up on them other than clicking "I agree"?

A No.

Q Okay. Do you know whether the faculty members at Georgia State University have received any copyright training?

A Some have, and some have not. There's ongoing training. There's regularly open sessions that are announced, as well as individual departments are having training for the entire department.

Q And is that copyright training something new since the new policy has been put into place?

A Yes, the training specifically is on the new policy and the implications for how they do their work.

Q Do you know when that training is scheduled to be complete?

A I would assume it's ongoing, but, no, I do not know.

Q Do you know whether all of the faculty members who fill out the fair use checklist will have received their copyright training?

A No, I wouldn't know that.

Q Do you know whether there's any plans to audit whether faculty members have saved copies of their fair use check lists?

A No, I don't.

Q Would that be something the library would be in charge of?

A No. That would be a legal function.

Q Okay. Okay. So number 4 on page 1 of P-37 says, "If none of the above options apply, obtain permission to use the item from the copyright holder", and then in paren, "(generally the publisher). Evidence of permission must be submitted to the library with your reserves request."

How would you expect the faculty member to obtain permission to use the item? How would that work?

A They would contact the publisher, if they knew, they would contact the Copyright Clearance Center, and; if it actually included what they wanted, they could go that way. We would advise them if they asked. But I think, in most cases, they would contact the publisher directly, but I don't really know. I've not -- I've never been asked by a faculty member how to do it, so I don't know what they do. They may have other routes.

Q Are you aware of whether anyone in the reserve department has ever been asked?

A I'm not aware.

Q And it says, "Evidence of permission must be submitted to the library with your reserves request."

What -- what form would that evidence take?

A Whatever form they receive the permission in, probably electronic.

Q What would the library do with that evidence of permission?

A We would file it with the request.

Q And how many items -- how much evidence is in that file?

A The request and if there were a permission granted, that permission.

Q And on how many occasions has that occurred?

A I don't know.

Q Who would know that?

A Denise Dimsdale.

Q Do you know whether a faculty member has ever contacted a publisher to obtain permission?

A I wouldn't know that.

Q If a licensing fee or some kind of permissions fee had to be paid to use the item, who would be responsible for paying that fee?

A A faculty member would be responsible for arranging payment.

Q And how would they go about arranging payment?

A I don't know.

Q Would that come out of the library budget?

A No.

Q Is there any money in the library budget to pay for permissions for specific works on the EReserve system?

A There's not a budget line for that, no.

Q Has the library ever paid permissions fees for particular copyrighted excerpts to be placed on EReserves?

A I'm not aware that they have. I haven't been in charge of the system the entire time it's been up, so...

Q In the period of time from 2005 on for which you've been responsible for the system, has that ever occurred?

A Not that I'm aware of.

Q And who would -- who would know that?

A Probably Denise would have been involved in that, so Denise would probably know.

Q Okay. Would it be fair to say that if it's happened, it hasn't happened on very many occasions, that the library has -- has paid for the permissions fee?

A Yes, that would be fair to say.

Q Okay. Okay. So if we turn to the second page of P-37, you see the University System of Georgia copyright policy page. And where does the screen shot that's the second page of this -- of P37 -- what server does that live on?

A That's at the Board of Regents.
Q Okay. And that has a link to a -- the fillable fair use checklist?
A Yes.
Q Okay. And the fillable fair use checklist lives on the Board of Regents' server as well?
A Yes.
Q Okay. If you turn to the third page of P-37, it's another screen shot, and the top of it says, "Policy on the use of copyrighted works in education and research."
This screen shot, again, we're on the -- the Board of Regents' servers here?
A Yes.
Q Okay. Did you have any involvement in designing or promulgating this policy?
A I was not involved in designing it. I have spoken to the Regents Academic Committee on Libraries, which is the library directors for the University System, to inform them and -- and alert them to this policy and its implications for their practices.
Q Can you tell me a little bit about the -- I'm sorry, the library --
A It's the Regents Academic Committee on Libraries.

Q Regents Academic Committee on Libraries. And who is on that committee?
A The directors of every academic -- or University System of Georgia libraries, which I believe is 35 University System schools.
Q How did you first become aware of this new policy?
A My boss, Nancy Seamans, was on the committee that developed this policy.
Q Did you have any conversations with her while the committee was in the process of designing the policy?
A No. No.
Q She didn't come to you for any input --
A No.
Q -- or anything?
A No.
Q Were you aware that she was on this committee and they were working on the new policy?
A Yes.
Q Okay. But you didn't have any conversations with her about it?
A No. "How did your meeting go?" "Fine, busy, long." That's pretty much the extent of it.
Q Like all meetings involving lawyers, long?

A And faculty members.

Q So when did Ms. Seamans first tell you about this new policy?

A When she received a request from the chancellor to sit on the committee, she told me it was being developed.

Q Okay.

A And then --

Q And when did you first learn that the -- the policy had been finalized?

A When the committee had finished their work and it had not yet been approved by the chancellor, she gave me the password to get onto the Website. That was at that point passworded to see it.

Q And what did you think of the new policy the first time you saw it?

A I thought it was good, it looked familiar. It's very similar to other policies I've seen at other universities.

Q How did you come to look at other policies at other universities?

A There was a lawsuit filed for copyright infringement, so I spent a lot of time looking at other universities.

Q Did you do that at anyone's request?

A No.

Q Okay. That was just you decided to do that because you were curious?

A Yes.

Q Okay. What -- what did you conclude about -- if anything, about the then current Georgia State University policies as opposed to the policies on the other Websites that you were looking at?

MR. ASKEW: I'm going to object to that from a time -- on a time basis. I'm not sure what you're talking about when you said "the then current Georgia State policy."

MS. SINGER: Fair enough. I'll clarify.

Q (BY MS. SINGER) At the time you were looking -- after the lawsuit was filed, at the time you were looking at the policies on other university Websites, right --

A Um-hmm.

Q -- the policy we're looking at on P-37 was not in effect --

A Correct.

Q -- correct.

What was your opinion about the policy at Georgia State University that was in effect at that time compared to the policies you were seeing on other university Websites?

A Well, we didn't have a policy. We followed the Board of Regents' guidelines that existed prior to this.

Q Okay.

A So it was -- I -- I noted that we had a percent chapter guideline in place, and I did not see that on other universities, and I noticed they had a fair use checklist on a lot of these, and we did not have a fair use checklist.

Q Did you think it was a good idea to have a fair use checklist?

A Yes.

Q Why is that?

A Because faculty members are the ones who can do this, and by having a public checklist that goes through all the different factors and things that weigh for or against something, a faculty member is better able to assess whether a use is fair.

Q And you said the other university Websites didn't appear to have chapter percentage guidelines?

A Some did, but not -- some did; some didn't. It varied.

Q Did you -- do you think it's a good idea to have chapter percentage guidelines?

A I do not think it is -- it can't operate exclusively as a proxy for a fair use analysis. When you have staff members dealing with faculty members, it's a quick way for them to see whether or not they have a problem that needs to be pursued with a request.

Q Do you think it would be a good idea to have a chapter or a percent guideline in conjunction with a fair use policy?

A No, but --

MR. ASKEW: I'm going to object to the form of the question as vague. I'm just -- I'm not sure what you're inquiring into just as "a good idea." I think it's vague, Ms. Singer.

MS. SINGER: Well, she is in charge of implementing the policy, so I'm asking if she thinks it would be useful to have that guideline in addition to it.

MR. ASKEW: Is that going to be the question, then, useful as opposed to a good idea?

MS. SINGER: Sure, let's ask the question as useful.

THE WITNESS: No, because it puts the burden on the library staff as opposed to the faculty, and I don't want that.

Q (BY MS. SINGER) Okay. So you believe that the burden should be on the faculty and not on the library staff?

A Yes. The faculty know the subject matter of the book they're looking at, so they're the ones that can do the analysis. They know how they're going to use it for teaching, they know what they're objectives are.

Q Should the library have any burden at all?

A For what?

Q For copyright compliance.

A I'm not sure I understand your question.

Q Should the library have any responsibility for determining whether a particular use is fair use?

A I don't think the library is responsible for determining whether a use is fair use. I think the library has a responsibility that if they have a concern, that they contact legal or the faculty member and then legal to -- to make sure that that is done, but I don't think it's the library's responsibility to do the fair use analysis. I don't think the library can do the fair use analysis for an individual course reading.

Q Why not?

A Because it's not our course. We're not teaching it, we don't know what the objectives are. We most likely don't know the subject in enough depth to know -- to know if a use is fair.

Q Okay. Do you know whether faculty members have reviewed the policy on the use of copyrighted works in education and research before they fill out the fair use checklist?

A No. I wouldn't know on an individual basis. If they've gone through the training, they have.

Q Okay. On -- in the second paragraph of the policy, it says, "The University System of Georgia" --

MR. ASKEW: What page are you on? Excuse me.

MS. SINGER: I'm sorry. I'm still on page 3 of Plaintiffs' 37.

Q (BY MS. SINGER) It says, "The University System of Georgia facilitates compliance with copyright law."

Do you know what's meant by that, what the university does to facilitate compliance?

A Well, the University System developed the checklist, and the university and the University System both employ legal, lawyers to help people if they have questions about copyright and fair use.

Q The policy then goes on to list specific things that the University System does. And the last bullet point says, "Identifies individuals at the University System and member institutions who can counsel faculty and staff regarding application of copyright law."

Do you know who that -- who the individual is for GSU?

A Yes.

Q Who is that?

A Cynthia Hall.

Q Is there anyone else at GSU?

A Anybody in the legal department will work with us on that. She's our normal initial contact.

Q Okay. Okay. If we turn to the fourth page of P37, it's an screen shot of an electronic reserves request form?

A Yes.

Q And whose server does the electronic reserves request form live on?

A This is on the library's server.

Q Okay. And it says, "What kind of request would you like to make?" One of the choices is "print reserve."

A Correct.

Q Okay. How do print reserves work?

A A faculty member wants to put, for example, an entire book on reserve, so we say, "Well, we can put it on print reserve." There are shelves behind the desk, student gets the call number from the catalog and brings it to the desk and we get it from behind the desk and check it out to the student. The check-out time varies according to the professor's desires. It's on here. I can't remember what it is; two hour, three day, or seven day.

Q Okay. Do you know approximately how many books would be on print reserve at any given semester?

A It's maybe three or four shelves' worth, so a couple hundred, 150, I'm not -- I'm not sure exactly.

Q Okay. You think somewhere in the neighborhood of a hundred, 200?

A Yeah, it's certainly not a thousand or anything like that.

Q Okay. The next category on page 4 of P-37 is "media reserves." And the choice there are "video and audio" --

A Correct.

Q -- "for use in the media center"?

A Right.

Q Do you have any responsibility for the media center?

A Yes.

Q How do video and audio reserves work?

A We put a videotape or a DVD or a CD behind the desk just like we do a book and the rest of it work the same way. Those are in use -- inhouse use only, so they can't be checked out of the building, they have to use them in the building, and there's equipment in the media center for them to view or listen to those.

Q Okay. And then the last category on page 4 of P-37 is "electronic reserves from a book or journal or class notes." And then there's a series of four bullet points, and there's -- they're underlined. I assume those are links?

A Correct.

Q And what does -- what does the professor do with these -- with these links, or what do they link to? Let's start with electronic versions of journal articles.

A They link to a form for submitting a request for an electronic journal article -- version of a journal article.

Q Okay. And what about for parts of books?

A Same thing. These are to -- these link to different forms.

Q They link to different forms, okay.

So let's turn to -- I guess it's page 5 of P-37, and we see a screen shot for electronic reserves request form for print book. Whose server does this live on.

A The library server.

Q Okay. Is this the form that a professor or faculty member would fill out if they wanted to put a hard copy of a book on print reserves?

A Yes.

Q Okay.

A It says electronic reserves because we do create an entry in ERes that doesn't link to an actual digital file; it just gives you the call number, but that way a student can see everything on reserve in the same place. So a number of the items listed in ERes are just call numbers for print books.

Q Okay. Let's turn to page 6 of P-37. This is "electronic reserves request form for video."

A Um-hmm.

Q Does this --

A Yes.

Q Does this live on the library server as well?

A Yes.

Q Okay. And this would be the form that the professor fills out when they want to put -- I'll say a hard copy, for lack of a better word -- of a video actually on the shelf in the media center?

A Yes.

Q Okay. Page 7 of P-37 is "electronic reserve request form audio hard copy." And that is also living on the G -- the library server, I'm sorry?

A Yes.

Q Okay. And this is -- what do we mean by "audio hard copy"?

A A CD or a --

Q Okay.

A Mostly a CD.

Q So this would be the form that a faculty member would fill out if they want to put a CD on the shelf?

A Yes.

Q Okay. If you would please turn to page 8 of P-37. It says "electronic reserves request form, electronic article." This page lives on the library server?

A Yes.

Q Okay. And this is the form that a professor would fill out if they want to put an article in the EReserve system?

A Yes.

Q Okay. And then we see below the line there, it says, "this item can be placed on electronic reserve because, choose one: The library already licenses the item"?

A Yes.

Q Under what circumstances would a faculty check that box?

A If the item is available in one of the databases or electronic journals that we license.

Q Okay. And then, "if it falls under fair use, according to the fair use checklist I completed," under what circumstances would they click that?

A If they did an analysis using the fair use checklist and found that it was fair use.

Q Okay. And then, "if it is public domain or allowed under a creative commons license," when would they click that?

A When it was public domain or allowed under a creative commons license, and we do ask them to read the creative commons license to make sure it'd be a fair use --

Q Okay.

A -- or not a fair use, but an allowed use.

Q Okay. Or the last option is if they

specifically obtained permission from the copyright holder?

A Yes.

Q And then the professor fills out all the information about the journal there?

A That is correct.

Q Okay.

A I want to add a couple of notes. This is not a current form.

Q Oh, this is not a current form?

A This has been updated.

Q It has, okay. When was it updated?

A Sometime between when this was printed and now.

Q Okay.

A Within -- probably a month ago.

Q Okay. How -- what has changed on this form?

A There is now a line where a faculty member, if they actually have found the link to the licensed item, can include it.

Q Okay.

A And we have removed the section that says, "if your journal is not part of your collection, you may submit a personal copy to be scanned." No, that's still there, but we have taken off "you can submit an electronic copy." We won't take an electronic copy of something. They have to bring in a print copy that they own.

Q Okay. And when you say "they have to bring in a print copy," do you mean of a bound journal, or do you mean a printout of the article, what -- what will the library accept?

A It would most likely be a print journal.

Q Okay. If a faculty member brought in just a Word copy of a journal article, would the library accept that?

A No.

Q If the faculty member does not fill out all of the fields on this form, what happens?

A They get an error message telling them they have to fill out the bold fields that are required.

Q Okay.

A It's kind of hard to see on here which ones are bold, but some of them are.

Q Do you know which ones? I know it is hard to see on this.

A I think the only one that is not is author of article.

Q Okay. So it -- it's not possible to electronically submit a request without all of the

required fields?
A Correct.
Q Okay. Why were changes made to this form?
A Because I'm not comfortable accepting a Word or PDF file that I can't tell where it came from, because if the library doesn't own it and the instructor doesn't own it, I'm not putting it on reserve.
Q Okay. Let's turn to page 9 of P-37. This is -- says "electronic reserves request form, electronic book." And this form lives on the library server?
A Yes.
Q Is page 9 of P-37 the current form?
A I believe so.
Q Is this the form that a faculty member would fill out if they wanted to submit a book or an excerpt from a book for the EReserve system?
A Yes.
Q And would the faculty member need to fill out all of the bold fields again, all the required fields?
A Yes.
Q Do you know which fields are bold on this form?
A It looks like author, title, publisher, year,

chapter or page numbers, as well as the -- you have to pick one of the radio boxes at the top.

Q Okay. And the four radio boxes are the -- these are the same radio boxes that we --

A Yes.

Q -- looked at before. And the same circumstances -- the -- the faculty member would check these radio boxes under the same circumstances that you testified to a few minutes ago? In other words --

A The same thing as the journal article.

Q Right.

A Correct.

Q Okay. And it says at the bottom, "Please note that documents violating copyright and copyrighted items submitted without complete citation will not be posted." What does that mean?

A Well, the wording is vague. Violating copyright, I assume would be do not fall under fair use guidelines or do not have a -- evidence that permission has been obtained, and we require a complete citation.

Q Okay. How does the library determine whether the document violates copyright?

A Again, the gut check, it feels wrong, it's too long, the -- the items that I -- I went over earlier.

Q Okay. The items we talked about earlier, it was the -- essentially, it was really just the amount of the work; is that correct?

MR. ASKEW: I'll object to the form of that question. It mischaracterizes her previous testimony.

MS. SINGER: Okay. Well, the -- the record will say what it says, but let me rephrase the question for here.

Q (BY MS. SINGER) What -- specifically, what factors would the library use to determine whether the reserve department believes that an item violates copyright?

MR. ASKEW: I'll object to the form of the question as having been asked and answered previously.

Q (BY MS. SINGER) You can answer it again.

A Well, they will look at the amount used, the type of work, things that just don't feel right, did not follow the norm of what they put on reserve, but generally, it is the amount that is the -- the major alarm that will -- will alert them if there's an issue.

Q If the faculty member needs to fill out all of the required fields in order to put the request through, would there ever be a time that the item could

be submitted without a complete citation?
A No.
Q Okay. Turning to page 10 of P-37, the electronic reserves request form for electronic notes?
A Yes.
Q What -- what constitutes notes?
A Many faculty members put copies of their course notes, previous exams, exam keys, answer keys, things like that on reserve.
Q Okay. So those would be materials, as a general matter, that were created by the faculty member?
A Yes.
Q Page 11 of P-37 is the "electronic reserves request form for audio: Streaming." Do you see that?
A Yes.
Q What is streaming audio in the context of EReserves?
A We will post small pieces of audio from -- from materials in our collection, mostly CDs, on the university's, not the library's, but the university's streaming media server for students to access. We also will link to streaming media in databases we license that include music.
Q Okay. It says -- and then we see the same

four radio buttons on page 11 of P-37 that we've seen before. And the second radio button says, "It falls under fair use according to the fair use checklist I completed."

Would the fair use checklist for streaming audio be the same fair use checklist that's used for books?

A Yes. Yeah.

Q Okay. At the bottom of page 11 of P-37, there's a button that says "add to reserves cart"?

A Yes.

Q What does that mean?

A If the professor is putting four or five things on reserve, they can fill out the form for five four or five things and add them to a cart, and then when they're finished, they hit submit and it sends all of them at once.

Q Okay. Is there any limit to the number of things a professor can put in their reserves cart?

A Currently --

Q Currently.

A -- there is a limit of 50.

Q 50, 5-0?

A Yes.

Q When did -- when was that limit put into place?

A Last week.

Q Why did you institute that limit?

A Two reasons: First of all, workload. It becomes ridiculous to put a -- too many things on reserve for a course that students won't look at. It's a huge amount of work for our staff for no purpose.

And secondly, we thought it very unlikely that someone could actually do a fair use analysis of more than 50 items for a course. So it they want to put more than 50 on, they'll have to go through me or through the dean and we'll mostly -- we'll send them to legal to talk about completing the fair use analysis.

Q In the two weeks since the limit has been 50, has -- has there been any instances where someone has wanted to exceed the limit and come to you?

A No.

Q I -- I should have asked the question in the last -- since the policy has been instituted, have there been any occasions when anyone has wanted to exceed the limit?

A No.

Q Okay. Prior to the policy being put into place, where -- were there faculty members who requested more than 50 items on their EReserves page?

A The 50-item policy or the board -- the copyright policy, the Board of Regents' copyright policy?

Q 50-item policy.

A Yes.

Q On how many occasions?

A I don't know. Only select faculty members. It's not an overwhelming issue.

Q So less than 10 professors tried to put more than 50 items up, would you say?

A I would say that, yes.

Q Okay. Of course, your answer leads to the other question: Have there been any instances, that you're aware of, of professors who did not comply with the University of Georgia copyright policy, that you're aware of?

MR. ASKEW: I'll object to that question as being asked and answered previously.

Q (BY MS. SINGER) You can answer.

A I also don't understand the question. Can you rephrase it?

Q Sure. I think I -- I asked you before if you're aware, since the policy was put into place, of anybody who tried to do more than 50 items.

A No.

Q Okay. Since the Georgia -- since the USG copyright policy has been put into place, there have been professors who tried to post more than 50 items to their EReserves page?
A No.
Q There have not?
A No. There have been prior to the policy being put in place.
Q Okay. So at this juncture, was there a particular instance or a particular incident that caused you to implement the 50-item limit at this juncture in time?
MR. ASKEW: I'll object to the question as vague as to what you mean by "at this juncture."
Q (BY MS. SINGER) You said the policy was put into place a week or two ago, I think?
A The 50, yeah.
Q The 50 item. Why specifically a week or two ago was that policy put into place?
MR. ASKEW: I'll object to the form of the question being asked and answered, but you can answer again.
THE WITNESS: New semester, reviewing our work flow with this new -- new Board of

Regents copyright policy in place seemed a reasonable step.

Q (BY MS. SINGER) Okay. Was we sit here today, April, I think, 24th, what semester are we in at GSU?

A Spring 2009.

Q Okay. So when you say "new semester," what -- what semester were you referring to?

A Summer.

Q The summer semester. When does that begin?

A May -- there's a Maymester, and then there's a summer semester. The Maymester begins in early May. I don't know the exact date.

Q Okay. When does the spring 2009 semester officially end?

A I believe it's May 4th is the last day of finals, but I'm not certain, something -- somewhere around there.

Q When -- what does the library do with the EReserves course pages at the end of a semester, or what does the library -- strike that.

What is the library planning to do with all of the items currently up on the EReserve system on May 4th or May 5th, 2009.

A They are sent to the dark archive that is part of the EReserve system.

Q Can you -- can you tell me more about what -- what is the dark archive?

A When a -- when a item is no -- when it is no longer the current semester, students can no longer access that page, nor can faculty, nobody can access that page. So it's sent into a dark archive, where the files are not deleted, but they are longer accessible.

Q They're not accessible to anybody?

A Staff can access them with administrative password, but they're not accessible to any user.

Q Okay. Which -- which staff members have an administrative password?

A The members of the reserves unit have one.

Q Okay.

A I have one.

Q Have you ever used yours?

A Only to look at things as a result of this lawsuit.

Q Okay. So in the ordinary course of business, you generally do not access the dark archive?

A No. Never.

Q On whose server does the dark archive live?

A That is on the server in IS&T, central computing.

Q And that's GSU?
A Yes.
Q Okay. Do you know who has supervisory authority over this -- the GSU server that hosts the dark archive?
A I believe Keith.
Q Okay.
A Ultimate boss is Bill Paraska.
Q Do you know what Bill Parasko's [sic] title is or what department he's in?
A I don't know what the unit is called. They're responsible for the servers and the -- the physical infrastructure of the network on campus, as well as the security of the network.
Q Do you know ultimately to whom Bill Parasko [sic] reports?
A Paraska.
Q Paraska.
A He reports to J.L. Albert.
Q J.L. Albert. Does the dark archive contain -- strike that.
What -- what does the dark archive contain?
A At this point, it contains everything that was ever on reserve since 2003, as far as I know.
Q Are there any plans that you're aware of to

change the -- having the dark archive contain everything since 2003?

A When this lawsuit ends and I can delete things again, I intend to delete everything except for the most recent year.

Q Okay. To the best of your knowledge, what is the purpose of the dark archive?

A It provides a backup copy of a file, so if something in the live archive is corrupted, we can pull it back out. It also allows for renewing a course page. So if a professor teaches a class in fall '08 and is teaching the same class in fall '09, previously he could ask to have the page renewed and we would just pull it out of the archive and it would just come back into a live site; it would generate a new password that the professor would give to his students in that -- in that semester and then they would have access to it.

Under the new policy, we have informed faculty we will not renew any pages because they must do a fair use analysis of everything that is -- that they're requesting for reserve and that has not been done for anything in the dark archive.

Q Okay. So if I'm a professor, and I'm teaching a course in the Maymester that I taught in Maymester of 2008 and I call the library and I say, "Can you please restore my Maymester 2008 course reserves page," what -- what is going to happen?

A We will say, "We are not restoring pages because you need to do a fair use analysis of everything that you want to put on; but if you'd like, we will send you a listing of what you had on reserve."

Q Okay.

MS. SINGER: I'm informed that we need to change the tape, so this is probably a good moment to take a break here.

THE WITNESS: Okay.

THE VIDEOGRAPHER: Off the record at 11:19:37.

(Whereupon, there was a brief recess.)

THE VIDEOGRAPHER: This is Tape 3. We are back on the record at 11:29:31.

Q (BY MS. SINGER) Okay. Ms. Burtle, you have in front of you what was marked yesterday as Plaintiffs' Exhibit 38, which is the policy on the use of copyrighted works in education and research. Do you see that?

A Yes.

Q Okay. The second page of P-38 is additional guidelines for electronic reserves.

A Yes.

Q Do you see that? Okay.

Is this -- the additional guidelines for electronic reserves, is that part of the University System copyright policy?

A Yes.

Q Okay. So this page would likely live on -- I know this is not a screen shot, but this page would live on the -- the Board of Regents' server?

A Yes.

Q Okay. The additional guidelines, the first bullet point says, "Instructors are responsible for evaluating, on a case-by-case basis, whether the use of a copyrighted work on electronic reserves requires permission or qualifies as fair use." And there's a link. Do you know what that fair use -- does that link to the checklist, do you know?

A That would be my assumption.

Q Okay. "If relying upon the fair use exception, instructors must complete a copy of the fair use checklist before submitting material for electronic reserves." Do you see that?

A Um-hmm.

Q And I don't want to characterize your testimony, but does the library ever look at the copies of this fair use checklist that the instructors fill out?

MR. ASKEW: Object to form.

THE WITNESS: The library, who?

Q (BY MS. SINGER) Does anybody in the library ever look at the fair use checklist that the instructors fill out?

MR. ASKEW: I'll object to the form of the question as being asked and answered.

But if you can answer it again, answer again.

THE WITNESS: No.

Q (BY MS. SINGER) Okay. Are you aware of whether instructors have completed their copyright training before they fill out the fair use checklist?

A No.

Q Is it possible that instructors would fill out the fair use checklist without having had copyright training?

A Presumably.

Q The second to last bullet point says, "Library reserve staff should delete materials available on electronic reserves at the conclusion of the semester." Do you see that?

A Yes.

Q And does the GSU library reserve staff do that?

A They move them to the dark archive, which deletes access to them by the students who were in the course during the semester.

Q Okay. When -- when is that done, I mean, is it the day after exams or --

A I don't know.

Q Okay. Do you know how long, approximately, the pages from the prior semester remain on the system before they're -- after the conclusion of the semester?

A I think that's the same question, but, no, I don't.

Q Okay.

A I mean, it's -- it's right after the semester, but I don't know the exact day, if it's one day or two days or three days.

Q Do you -- do you think it's within a week?

A Yes.

Q Okay. In order to move those pages to the -- the dark archive, can you do that globally, or do you need to move each page one by one to the dark archive?

A I'm going to backtrack a minute on your previous question.

Q Okay.

A I think, when the page is created, an

expiration date is put on it at the creation point and I know -- it's not done manually; they automatically gets sent to the -- to the archive.

Q Okay. So the expiration date would presumably be within a couple of days after exams are over?

A It's probably the day after exams, but I don't know that for certain.

Q Okay.

A That's not something I manage directly.

Q Okay. Who would imagine that directly?

A Denise Dimsdale.

Q Okay. Turning to the last page of P-38, it says "introduction to the fair use checklist." This page would live on the Board of Regents' Website?

A Yes.

Q Board of Regents' server. I'm sorry.

A Yes.

Q And these instructions -- who are these instructions aimed at?

A Faculty.

Q Okay. I want to go back to something you mentioned before. You said -- I'm not sure -- were you a -- are you a part of the Regents Academic Committee on Libraries, or were you reporting to them?

A My -- by boss is a member, Nancy Seamans is a member.

Q Okay.

A She was unable to attend the meeting that was held, and asked me to attend in her place. Bill Potter from the University of Georgia, who is also a member, was going to introduce this policy to the membership. He was unable to attend and knew that I was familiar with it and called and asked me to do it instead, as he knew I was going to be there.

Q Okay. Do you recall approximately when that meeting was?

A I believe it was -- what is this, February -- March 27th.

Q March 27th?

A It was a Friday in late March.

Q Okay. What -- what did Bill Potter ask you to do at that meeting?

A Just introduce the membership to the -- to the policy, show them where it was, go over what it said.

Q And how did you -- what specifically did you do to introduce them to the policy?

A I made a whole bunch of copies of it and I handed it out.

Q Okay.
A And I went through it with them and said you might notice there's a fair use checklist and that instructors need to fill this out and that there are specific guidelines for electronic reserves and that, you know, you need to make adjustments in your own library to make sure that you're accommodating these guidelines.
Q Approximately how long did that introduction take?
A Probably between 20 minutes and half an hour with questions and conversation following the -- kind of going through the policy.
Q What kinds of questions were you asked?
A I showed them our Website that had the form where people indicate under what criteria things are available for -- for fair use, it links out to the checklist and such. And they asked me a lot of questions about the form, about our work flow and how our work flow had changed, about whether faculty were upset, all of which, you know, it was too early to tell. It was brand new.
There was a suggestion that the University System libraries all develop similar Web pages and follow similar practices to all make sure we're in

compliance with the new policy, and I was asked to chair a committee to -- to come up with a standard practice for electronic reserves at University System libraries. That committee is being formed. It has not yet met.

Q Who -- who is going to be on that committee, do you know?

A Me. I do not know who else at this point. It's being appointed by the chair of the RACL group.

Q And who is the -- RACL is the Regents Academic Committee --

A Right.

Q -- on Libraries?

A Right.

Q Okay. Who is the chair of that group?

A Her name is Carol Bray; she's the director at -- I think she's the director at East Georgia College. I'm not sure. A small college somewhere in -- outside of metro Atlanta.

Q Do you have any role in deciding who's going to be on that committee that you're chairing?

A No. There was general discussion that we get people from the research libraries and the four years and the two years; but beyond that, not names.

Q Does that committee have a name yet?

A No.

Q No good acronyms yet?

A No. The EReserves copyright committee.

Q Okay. And it shall be dubbed?

A And it shall be dubbed, yes.

Q When you went to this RACL meeting in late March and introduced the policy, was that the first time that the other committee members were learning of the policy?

A Some of them.

Q Have you had any subsequent conversations with any members of the -- the RACL committee or their designees about your work, the work flow at GSU, or how GSU is implementing the policy? Have there been any follow-ups from that meeting?

A I've had a couple of brief discussions with representatives from Georgia Tech and the University of Georgia, mostly sharing our Web pages with them.

Q Is it or was it your sense that GSU was either the first or among the first to be implementing the new policy?

A Yes.

Q Okay. Was -- or is -- strike that.

When do you consider that GSU first implemented the policy, the new copyright policy?

A We were responsible for abiding by the policy as soon as the chancellor approved it and it went up on the Website and was announced through the Board of Regents' communications channels.

Soon thereafter, next day, the next two or three days, we revised -- we put up our new Website that had the -- the indications that you must do a fair use analysis, and you must indicate under what circumstance this is eligible for electronic reserves within a couple of days after that.

Q Okay. And that was sometime in February of 2009?

A It might have been mid March. I -- I'm just not sure exactly when it was.

Q Okay.

A Sometime in the middle of spring semester.

Q Was anything done at GSU about things that were already posted on the ERes system for spring 2009 that was posted before the new policy went into effect?

A Yes.

Q What was done?

A For spring -- the materials that were on reserve for spring 2009, we went back and looked for electronically -- electronic versions that were already in a licensed database, and where we found those, we took down the PDF and made a link.

Q How many -- how many articles did that implicate, approximately?

A I couldn't say. A lot.

Q More than a hundred?

A Yes.

Q More than 500?

A I -- I don't know.

Q Okay. Did you do anything else about the materials that was already posted for spring 2009?

A No.

Q Did any requests come in for materials to be posted for spring 2009, did any request come in post the new policy?

MR. ASKEW: I'll object to the form of the question as vague.

THE WITNESS: I don't know. I'm not that hands on with the requests.

Q (BY MS. SINGER) When -- what was the deadline for submitting a request for Maymester of 2009?

A I don't believe we posted a deadline for Maymester. It's a small -- there aren't many requests. I don't think we -- we do -- we do deadlines for the big semesters.

Q Okay. What was the deadline, then, for summer 2009?
A I -- I don't know. Denise Dimsdale --
Q Okay.
A -- would know.
Q Do you know if it was before the new policy was implemented or after the new policy was implemented?
A No. I -- I don't believe it's actually been sent out at this point.
Q And by "it," you mean the new policy or the request?
A The notice that this is the deadline.
Q Okay. So I take it, then, that any material posted for summer 2009 will be in compliance with the new policy; is that --
A Yes.
Q Okay. You said one of the questions at the RACL meeting was were faculty upset. What was the answer as to that question?
A Not yet.
Q Since that meeting, has -- have faculty been upset at the new policy?
A Actually, I have not heard faculty being upset. I'm not sure I would hear. They may be upset

at their training sessions, they may not be. I -- I -- I'm not aware.

Q Okay. Would Denise maybe be aware of that?

A It's possible. If she is, she hasn't -- she hasn't shared that with me.

Q Okay. Does the library provide the ERes system for all of the schools on the GSU campus?

A I don't think I understand the question.

Q Are there -- are there any -- maybe it's grad schools or anything that the library --

A There's only one library at Georgia State.

Q Okay.

A There's not a graduate school. I mean, there are different colleges, but we don't -- it's just all the faculty.

Q Okay.

A The law school does have their own library and they also use ERes and they do their own ERes. We don't do theirs. But everything else we do from the main library.

Q Okay. Do you know where -- which server the law school's ERes system lives on?

A The same server.

Q And that's the IS&T server for GSU?

A Yes.

Q Okay. The one that goes up to J.L. Albert?
A Yes.
Q How would you characterize your role in the ERes system?
A I'm ultimately responsible for it, as that unit is in my reporting areas.
Q What -- what kind of day-to-day interaction do you have, if at all?
A I don't have day-to-day interaction.
Q How often -- aside from implementing the new policy, in the ordinary course of business, how often do you have discussions with the reserve department about the ERes system?
A Infrequently. Only if there's an issue.
Q What -- what type of -- I think you said you had an administrator password?
A Yes.
Q What -- what does that -- what can you do with an administrator password?
A Well, what I do with the administrator password is it lets me run reports to see, you know, what's on reserve, how -- how frequently it's used, those are the two main things I've done.
Q Do you run those reports on a regular basis?
A No, I've run them out of curiosity as part of

this case.

Q Does anybody run reports on a regular basis?

A I believe Denise does, as she's who showed me how to do it.

Q Okay. Do you know how often she runs reports?

A No.

Q Do you review -- in the ordinary course, do you review reports with any kind of regularity?

A No.

Q Okay. Would you review them even once a semester?

A No.

MS. SINGER: This is 75, please.

Would you please mark this as Plaintiffs' Exhibit 75.

(WHEREUPON, Plaintiffs' Exhibit 75 was marked for identification.)

(Whereupon, there was a discussion off the record.)

Q (BY MS. SINGER) Ms. Burtle, you have in front of you what's been marked as Plaintiffs' Exhibit 75, which is Bates stamped Georgia State 38882.

A Yes.

Q Do you recognize this document?

A Yes.

Q Okay. And this is an email from Nancy Seamans to you dated October 10th, 2008?
A Yes.
Q Okay. Plaintiffs' Exhibit 75 says, "List of possible topics from October 8th meeting with J.L. and October 3rd meeting with Mike." Is J.L., J.L. Albert?
A Yes.
Q And who is Mike?
A Mike Russell.
Q And what is Mike Russell's role or title?
A He's the director of university academic technology services.
Q Is he -- who does he report to?
A J.L.
Q He reports to J.L., okay. And who is Tammy Sugarman?
A She is the associate university librarian for research services, my counterpart over the other areas of the library.
Q Okay. So she's also an associate librarian?
A Yes.
Q And she reports to Nancy Seamans the same way you do?
A Yes.
Q Okay. The -- do you -- were you at this

October 8th meeting with J.L. or the October 3rd meeting with Mike?

A No.

Q Were you aware of what occurred at those meetings generally?

A Only from this email.

Q Okay. Under the second set there on Plaintiffs' 75, it says, "Mike's topics per 10/3 conversation." The first line is, "ERes, Jim Palmour's role with this. Need to solve it." Do you know what that means?

A Mike was unhappy with having a highly paid employee scanning things.

Q Do you know whether, in fact, this was, quote/unquote, solved?

A Yes.

Q And how was it solved?

A The library is now scanning things, not Jim Palmour.

Q Okay. The next entry on P-75 is, "DSpace, Jim Palmour's role with this. Need to solve it." Are you familiar with what that means?

A Jim Palmour used to work with a gentleman named Phil Williams, who was managing our DSpace institutional repository server, Phil Williams retired, leaving Jim Palmour in charge and Jim Palmour did not know what to do. So we were not getting good service there.

Q Was this solved, do you know?

A Yes.

Q How was that solved?

A We got rid of DSpace. We went to a hosted system.

Q Okay. And when you say "a hosted system," that's a --

A We're paying a company to run it --

Q Okay.

A -- to run a different system for us, their system.

Q So that has been outsourced from the university?

A Correct.

Q Okay. The next entry on P-75 says, "Coursepacks, Jim Palmour's role with this," in all caps, "we need to get out of it and solve it." Do now what that is referring to?

A The Jim Palmour's role, I assume, is, again, scanning things, and I believe that Mike very much wanted us not to -- or wanted him, not us, not the library, but the univer- -- his piece of IS&T in the university to stop doing Coursepacks.

Q Do you know whether this was solved?

A I do not know.

Q Okay. Do you know whether IS&T is still responsible for Coursepacks?

A I don't know.

Q Does the library have any responsibility for Coursepacks?

A No.

Q Okay. The next entry on P-75 is "inventory of services to support extended campus users, uLearn, Portal (Luminis), our committee intersecting with Mike's area." Do you know what that's referring to?

A Yes.

Q What is that referring to?

A We had a -- we have -- had, maybe still have a committee looking at how to support users who are not at our downtown campus.

Q Okay.

A And so, you know, we use it supporting them using uLearn or the university portal, which are in IS&T's area of responsibility, but we also need to provide library services to those users, so something about the committees talking to each other.

Q Do you have any role in those conversations?

A No.

Q The next entry down on P-75 is "ePortfolios." Do you know what that refers to?

A Not specifically.

Q Do you know generally what an ePortfolio is in this context?

A In this context, I'm not sure. Generally, it's something that students use to showcase their work, but Mike is not responsible for student services, so I'm not sure in this context what that means.

Q Is the library responsible for ePortfolios?

A No.

Q The next entry on P-75 says "archiving." Do now what's meant by archiving?

A No.

Q Okay.

A No, I don't know in that context what that means.

Q Okay. The next entry on P-75 is "content DM." Do you know what that means?

A Yes. Content DM is a -- a system that the library uses to host digital images from our special collections department.

Q Okay. And those -- can you tell me what those special images -- can you give me an example of what that might entail?

A For example, we held photo collections that -- of historic Atlanta, of labor photos from one of our donors.

Q Okay. The next item on P-75 is "future directions, we both need them." Do you know what that refers to?

A New directors in both places. Just figuring out where we're going --

Q Okay.

A -- generally.

Q Has -- where does that stand today, to your knowledge?

A Everybody is looking at their organizational structures, their future needs.

Q Has the library organizational structure changed?

A No.

Q Do you know if there's plans for the library organizational structure to change?

A Yes.

Q And what are those plans?

A We are looking at the organizational structure of our technical services, which includes cataloging acquisitions and collection development, and we are looking at the organizational structure of our digital library services.

Q Are those -- I'm sorry, are those under your umbrella, or are those under Tammy's umbrella?

A One is Tammy and one is me. The digital library one is me.

Q And when you say you're looking at that area, what do you mean by that?

A There are two working groups examining the staffing and services in those areas and providing recommendations.

Q Would those -- any decisions made by those working groups have any impact on ERes or uLearn?

A No.

Q Okay. The next item on P75 says "short term-GIL upgrade." Do you know what that refers to?

A Sort of.

Q Okay.

A GIL is the catalog, the library does not run the -- the library does not run its own catalog. It's run at a system level, University System level.

Q Is that Board of Regents?

A Board of Regents, right, so this is referring back to the LSS unit being dissolved. They were running GIL.

Q Okay.

A Okay.

Q So you wanted to make sure you would still have --

A That's -- that's what GIL is. I'm not sure what "short term" and "upgrade" mean in this context.

Q Okay. Are you aware of any upgrades that have happened in GIL?

A There -- there is a new version. It may have been referring to that.

Q And then the last entry there above Dean Seamans's signature block on P75 says, "Laura as liaison between library digital initiatives and academic technology services." Do you know what that refers to?

A That I need to maintain a strong relationship with Mike.

Q Okay. Have you done that?

A Yes.

Q Do you meet with Mike on any kind of regular basis?

A We have lunch every few months.

Q What -- what do you discuss with Mike at those lunches?

A I don't think I can tell you specifically.

What we're doing in the library, what he's doing in his units.

Q When was your last discussion with Mike about -- about EReserves?

A Prior to us taking over the scanning operation from Jim Palmour.

Q Okay. Have you had any conversations with him since then?

A Not that I recall.

Q All right. Let's just do one more housekeeping thing and then we can break for lunch.

MS. SINGER: Would you please mark this, Georgia State 3586, as Plaintiffs' Exhibit 76.

(WHEREUPON, Plaintiffs' Exhibit 76 was marked for identification.)

Q (BY MS. SINGER) Ms. Burtle, do you recognize Plaintiffs' Exhibit 76?

A I think I know what it is.

Q Okay. And what is Plaintiffs' Exhibit 76?

A It's a list of staff and accessing media services that's part of the library's annual report.

Q Is [sic], to the best of your knowledge, Plaintiffs' 76 reflect the current staffing at Georgia State University?

A No.

Q Could you tell me how the current staffing is different from what's reflected on Plaintiffs' 76?

A A number of these people aren't here and some new people have come in, but the people working in reserves are the same.

Q Okay. And when you say "the people working on [sic] reserves," that's Malia Cargile, Marjorie Denise Dimsdale, Denita Hampton?

A Denita supervises the unit, but does not work directly on a hands-on basis with it.

Q Okay. And Cory Schlotzhauer?

A Yes. In looking at this list, I believe Douglas Walker at the bottom there may also do some reserves, but I'm not quite sure what.

Q Does Douglas Walker report to Denita Hampton, to the best of your knowledge?

A I'm not sure if he reports to Denita or to Denise.

Q Okay. But he would be in Denita's reporting line?

A Yes. Yes.

Q Okay. And in the entries after the names, let's look at Denita Hampton as an example here. It says "access and media services, 1998." What does the

date represent?
A The year she began working at --
Q And then after it, it says "BA." What does that refer to?
A Her degree.
Q Okay. So for Marjorie Denise Dimsdale, would I be correct that she started working for the library in 1998?
A Yes.
Q And that she has a BA?
A Um-hmm.
Q And then a Master's in -- is that music?
A Music, yes.
Q Okay.
MS. SINGER: All right. It's a little after 12, so why don't we break for lunch, I think, at this juncture.
MR. ASKEW: Good.
THE VIDEOGRAPHER: Off the record at 12 o'clock.
(Whereupon, there was a lunch recess.)
THE VIDEOGRAPHER: This is Tape 4. We are back on the record at 1:06:43.
Q (BY MS. SINGER) Okay. Ms. Burtle, I'm handing you what has been marked as Plaintiffs' Exhibit

24. It's a copy of the Complaint. And I'm --

MS. SINGER: If you would please mark this as Plaintiffs' 77.

(WHEREUPON, Plaintiffs' Exhibit 77 was marked for identification.)

Q (BY MS. SINGER) Okay. Ms. Burtle, you have the great big, thick thing in front of you that's been marked Plaintiffs' Exhibit 77, bearing the Bates stamp GSU 8247.001 xls-1. Do you see that?

A Yes.

Q Do you recognize Plaintiffs' Exhibit 77?

A I don't know that I've seen it in this form before, but I recognize what it is.

Q Okay. And what is Plaintiffs' Exhibit 77?

A It's a document hit report from the ERes system from the dates 1/1/09 to 4/2/09.

Q Have you seen reports in the same format as P-77 before?

A Yes.

Q And this is -- strike that.

Is this the form of report that generally you look at from the EReserve system?

A If I'm looking for hit counts, yes.

Q Okay. And we see that the headings at the top of P-77 are document, course reserves page, date

range, hit count, and percentage of total?
A Yes.
Q Do you see that?
A Um-hmm.
Q Could you walk us through what each of those columns mean?
A The document is what the document that's on reserve is.
Q Okay.
A The page is which course page it's on, so course number and the -- who's teaching it. Date range is number of hits during that date range. Hits is the number of times that document has been accessed. And percent of total is the percent of all the accesses during this time that that accounts for.
Q Okay. And the -- the total, then, would be all of the hits for everything on the ERes system for that date count?
A Everything on the active ERes system, yes.
Q Everything on the active. When you say "active" --
A Not in the dark archive.
Q Okay. Thank you.
Course reserves page, am I correct that each professor -- each course has its own page; is that how

ERes is set up?

A Yes.

Q Okay.

A Each section of each course.

Q And what do you mean by "section"?

A Professor could be teaching three sections of the same course.

Q Okay.

A Each section will have its own page.

Q Okay. If I could direct your attention to page 17 of P-77. So it's the -- the page where the number 17 comes after the dash on P-77.

A Oh, I see.

Q I'm not going to make you count, so --

A I couldn't see where you were looking at a number.

Q Okay. The second entry on page 17 of P-77, the document is 15a) Awakening Children's Minds, Chapter 6, pages 181 to 199 from -- the author there is Berk, L.E., and the publication is Awakening Children's Minds, Oxford: Oxford University Press, 2001. Do you see that?

A Yes.

Q So that excerpt from Awakening Children's Minds, the Oxford University Press book, would have been used in course EPY 7090, the Psychology of Learning of Young Children, in spring 2009 taught by Flexner, Kruger, and Lederberg?

MR. ASKEW: I'll object to the form of that question. I don't think there's a foundation for that question with this witness, and I don't know how this witness would know whether that document was used in this class or not. All this witness knows is what is reported on this form.

MS. SINGER: Okay.

MR. ASKEW: We went through this a lot yesterday, and I felt like at one point that we really needed to stop and see if we couldn't just have some sort of an agreement that the witness is allowed to tell you that these items are on the form. But you can ask her, but I seriously doubt that she's going to know whether that actual document was actually used in that class. It would be beyond what she would know. She can tell you it's on the form. She can probably you tell you that she has no reason to believe that the form is inaccurate, but all she's going to be able to tell you is that this document appears in that report --

MS. SINGER: All right. I appreciate --

MR. ASKEW: -- and the data's there.

MS. SINGER: I appreciate your position.

MR. ASKEW: And if you'd like to maybe go through and just identify the various items that you would like to have that acknowledgement made, I think we could do that, maybe it could speed things up; but beyond that, I don't know what else she can tell you.

MS. SINGER: I appreciate your position. I'm going to go ahead and ask my questions because it's my deposition.

Q (BY MS. SINGER) So on page 7, entry 15a), it's the second entry on page 17 of P-77, we see that this excerpt from the Oxford Unity -- University Press, Awakening Children's Minds, is listed as being used in course EPY 7090, the Psychology of Learning of Young Children, in spring 2009. Do you see that?

A Yes.

Q Do you have any reason to believe that that -- that excerpt was list -- not listed for that course?

A No.

Q Okay. And we see that it was -- the hit count is one, do you see that?
A Yes.
Q Okay. Now, if you would please turn to page 85 of P-77.
MR. ASKEW: Which page?
MS. SINGER: 85.
MR. ASKEW: Thank you.
Q (BY MS. SINGER) Do you see five -- five lines up from the bottom on page 85 of P-77, we see "Susan Chase, narrative inquiry, Sage Handbook of Qualitative Research." Do you -- do you see that entry?
A Um-hmm.
Q And that --
A Yes.
Q That's listed as being used in course EPRS 8500, Qualitative Interpretative Research and Education 1, spring, 2009. Do you see that?
A Yes.
Q And that's listed as having been hit 84 times?
A Yes.
Q Do you have any reason to believe that wasn't hit 84 times?

A No.

Q Okay. Who would have loaded these excerpts up onto the EReserve system for spring 2009?

A For spring 2009, I do not know if Jim Palmour was actually loading them onto the server or if that was being done in the reserves unit in the library.

Q Okay. If you wanted to check whether an excerpt was actually on the reserve system, how would do you that?

A I would log in as an administrator. There are levels of administrator. I have whatever the highest level is that would let me actually access this page, and I would click on that link and see if it's there. Is that what you're asking?

Q That's -- yep, thank you.

If you would please turn to page 133 of P-77, the bottom two entries, first one says, "Feminist Media Studies, Chapter 2, from Liesbet Feminist Media Studies, Sage Publications." Do you see that?

A Yes.

Q Listed as being used for course JOU 4780, Women and Media, spring 2009. Do you see that?

A Yes.

Q And that's listed as being hit 52 times?

A Right.

Q The entry after that is Chapter 3 from the same book, Liesbet Feminist Media Studies, Sage Publications, 1994. Do you so that?
A Yes.
Q For the same course, JOU 4780, Women andMedia?
A Yes.
Q And that has been hit 41 times in the -- the date range of this report?
A Yes.
Q Is that a problem for -- does that -- strike that.
Would you expect it to set off a red flag, as you call it, for -- or an alarm bell, I think you might have said, to have two chapters from the same work.
A Without seeing the work and what the professor said about it, I can't answer that. I don't know.
Q Okay. If you would turn to page 137 of Plaintiffs' 77. The first line there is, "Focus on the Language Classroom, Chapter 10." Do you see that?
A Yes.
Q And that is from Focus on the Language Classroom, Cambridge University Press, 1991?
A Um-hmm.

Q For course AL 8900, The Practicum. Do you see that?

A Yes.

Q And that was hit 57 times, according to this report?

A Yes.

Q Do you have any reason to believe that that information is inaccurate?

A No.

Q And the next entry is "Focus on the Language Classroom, Chapter 9," from the same work?

A Yes.

MR. ASKEW: I'm not following. What -- are we on page 177?

MS. SINGER: 137.

MR. ASKEW: 137. Okay. Just a second.

Q (BY MS. SINGER) And that is listed for the same course, AL 8900, Practicum. Do you see that?

A Um-hmm, yes.

Q And that was hit 17 times?

A Correct.

Q If, for some reason, you wanted information about a hit count or about what items were listed on the EReserve system, would you rely on a report like this?

A Yes.

Q If you would please turn to page 195 of P-77. The third line from the bottom, we see a -- an excerpt from -- called "Rethinking Critical Theory and Qualitative Research" by J.L. Kincheloe and P. McLaren in the Sage Handbook of Qualitative Research. Do you see that?

A Yes.

Q And that was used for course EPRS 8500, Qualitative/Interpretive Research and Education 1 in spring 2009. Do you see that?

A Yes.

Q And that is listed as being hit 45 times?

A Correct.

Q Two more. We're getting there. Page 283 of P-77. Third line down, L. Richardson, "Writing As A Method of Inquiry," in Norman Denzin and Yvonna Lincoln, the Sage Handbook of Qualitative Research.

A Right.

Q And that is listed as being used in EPRS 8510, Qualitative Research and Education 2?

A Um-hmm.

Q And that is listed as being hit 25 times during this semester?

A Right.

Q Okay. Last one, page 307 of P-77, lines 4 and 5 from the bottom, line 5 up says, "Slave Community, Chapter 4, The Slave Family by John Blassingame." Do you see that?
A Yes.
Q And below that, Chapter 7 from the same -- Chapter 7, also from the Blassingame Slave Community book. Do you see that?
A Yes.
Q Both listed as being used in AAS 3000, the African -- African-American Family, in spring 2009 --
A Yes.
Q -- do you see that? And the first chapter was hit once and Chapter 7 was hit five times. Do you see that?
A Yes.
Q What does, to the best of your knowledge, hit count mean? I think you said it meant it was accessed?
A It means that somebody who had access to that course page clicked on it.
Q Okay.
A If it says zero or one -- they should all say at least one because the staff member who loaded it and created the course page will click on it to make sure it's there.

Q Okay.
A When it says one, that means no students looked at it.
Q Do you have any way -- I'm sorry, strike that.
But this report, according to the date at the top, was run through April 2nd, 2009, right?
A Yes.
Q So there was still time left in the semester?
A Right.
Q Okay. Do you have any way of knowing what a student did with the work after they accessed it?
A Can you clarify your question?
Q Sure. Do you have any way of knowing whether they printed it out or saved a copy to their computer or emailed it to 12 of their closest friends? Do you have any way of tracking that?
A No.
Q Okay. Is it possible for a student to save a copy to their computer?
A It's a PDF file, so I don't know of any reason it would not be, but I do not know directly if that's true.
Q Okay. Do you know whether students print out --

A I have no way of knowing that.
Q Do you know if it's possible for them to do so?
A I believe it's possible since it is a PDF file.
Q Okay. So, to the best of your knowledge, you could do with -- after you access a file from EReserves you can do with it whatever you could ordinarily do with a PDF file?
A To the best of my knowledge.
Q Okay. Directing your attention to Plaintiffs' Exhibit 24. Do you recognize Plaintiffs' Exhibit 24?
A Yes.
Q Have you seen this before?
A Yes.
Q And what is Plaintiffs' Exhibit 24?
A It's the Complaint.
Q When do you recall first seeing Plaintiffs' Exhibit 24?
A Probably the day it was filed and we were notified that it was filed.
Q What did you do after reviewing Plaintiffs' 24?
A I'm sorry?

Q What, if anything -- what -- what action, if any, did you take after reading Plaintiffs' 24?

A Can you give me an example of what you're looking for? I -- I'm not sure I'm following you.

Q Did you talk to anybody, did you research anything?

A Certainly, yes.

Q Okay.

A Yes, I talked to people, asked questions, "What does this mean?"

Q Who did you speak to about Plaintiffs' 24 after you reviewed it?

A Well, I'm sure I spoke to Charlene Hurt, who was named in it and who is my boss. I spoke to legal counsel, obviously. I believe I had somebody look up the various items identified in here, I don't remember who.

Q Okay. What was the substance of your conversation with Charlene Hurt about Plaintiffs' 24?

A Oh, I don't remember.

Q Okay. Do you have any recollection of what she said to you about the complaint or what her general reaction was to having been named in the complaint?

A She was unhappy.

Q Anything else?

A I -- I don't remember the substance of any of our immediate conversations.

Q Okay. What -- what kind of research did you ask someone to undertake after reviewing Plaintiffs' 24?

A Let me look at it for a moment and see if anything comes to mind.

Q Sure. Take your time.

A Well, I definitely had somebody check to make sure that there was not a hole in our system that let the plaintiffs access this information, because it wasn't clear to me how it was obtained. I did have somebody check to see if the things identified in here were -- the -- the citations were accurate, nobody owned the items, that they were on reserve.

THE COURT REPORTER: In the what?

THE WITNESS: In the -- in the exhibits, checked to see that we owned the items, that the citations were accurate, that these actually were items and that we had them on reserve.

Q (BY MS. SINGER) What did you learn through your investigation about the password or the access to it?

A That the hole that had been in the system previously had been repaired and that there was no way to access this without a password.

Q Okay. You said you checked the citations to make sure that these items actually were on reserve. What conclusion did you draw from that inquiry?

A I don't remember item by item, but most of them were.

Q Okay. Just to go back for a moment to Plaintiffs' 77, the report. Sorry. Who -- who would enter the information that appears in each of these columns?

A The people in the reserves unit.

Q And that would be the --

A Denise Dimsdale, Malia Cargile, Cory Schlotzhauer.

Q Okay. Will that still be the case for summer 2009, that those three individuals or someone in the reserves department will be entering all of the data?

A I believe so, yes.

Q Okay. Do professors have access to their course reserve pages?

A Only when they're live during the semester, not after the semester is over.

Q Do professors have the ability to add items to their course reserve pages without going through the library?

A No.

Q Do professors have the ability to remove items from their course reserve pages without going through the library?

A No.

Q Do professors have the ability to change any items on their course reserve page, whether it's editing text or anything like that, without going through the library?

A No.

Q So the only person -- the only people who are able to change a course reserve page would be the library staff?

A Correct.

Q And the library staff -- library reserve staff, I'm sorry, have the ability to add items to the course reserve page?

A Yes.

Q Does anybody besides those three individuals have the power to add things to a course reserve page?

A Not that I'm aware of.

Q Okay. Does anybody other than those three individuals have the power to remove things from a course reserve page?

A Not that I'm aware of.
Q Does anyone other than those three individuals have the power to alter in any way a course reserve page?
A Not that I'm aware of.
Q Okay. Just to be clear, my questions were directed to, as we sit here today. Was that your understanding of those?
A Yes.
Q Okay. Are you aware of any planned changes to that policy with respect to adding, removing, or changing anything from course reserve pages?
A No.
Q Okay.
MS. SINGER: Okay. If you would please mark a document with the Bates number Georgia State 691 as Plaintiffs' 78, please.
(WHEREUPON, Plaintiffs' Exhibit 78 was marked for identification.)
Q (BY MS. SINGER) Ms. Burtle, you have in front of you Plaintiffs' Exhibit 78. Do you recognize this document?
A I don't recall it. I mean, clearly, it was sent to me, but I don't remember what it's about.
Q Okay. Plaintiffs' 78 is an email to you from

Marjorie Denise Dimsdale dated April 18th, 2008, subject re SP 2008 readings. And as we see on P78, it says -- the second paragraph says, "Kaufman's EPS 8500 has been renewed for summer '08." Do you see that?

A Yes.

Q Might -- does this refresh your recollection at all about the research you --

A Well, I see my question down at the bottom of the page, which clearly, this is a follow-up to having received the complaint, as the date is three days after it was filed.

Q Okay. And we see in the third paragraph of P78, it says, "The book in question for Kaufman's EPS 8500 page is Sage Handbook of Qualitative Research. This book is posted for summer '08. This 2005 edition has 1,210 pages, plus 19 supplementary pages. We scanned 183 pages." Do you see that?

A Yes.

Q It says, "The 2000 edition has 1,143 pages and we scanned 62 pages." Do you see that?

A Yes.

Q The next paragraph is, "Lazarus POLS 8170, Chapters 5, 7, and 8 of Legislative Leviathan were posted for" -- I assume that's spring '08?

A Right.

Q It says, "These three chapters are under 20 percent of the book"?

A Correct.

Q Okay. So am I correct in concluding that that would have been three chapters from a single work that were posted on the EReserve system for the single course?

A That what it appears.

Q Okay. The next paragraph of P78 says, "Dixon AAS 4030 and AAS 3000, these were posted for both courses for spring '08, Chapter 4 and Chapter 7 from Blassingame's the Slave Community"?

A Yes.

Q "This is less than 20 percent and the GSU library owns the book"?

A Right.

Q Okay. And then, "EPY 7090 was archived on 12/17/07, was not available for spring." What does that mean?

A That the course was not offered in the spring, so the page was sent to the dark archive and it was not available in the spring.

Q Okay. Do you recall whether there was any further communications in answer to your question at the bottom of P78?

A I -- I don't recall specifically. I believe more items than this were identified in the complaint, so I would assume that similar questions were asked for those items.

Q Okay.

MS. SINGER: If you would please mark as Plaintiffs' 79 a document bearing the Bates stamp Georgia State 3167.

(WHEREUPON, Plaintiffs' Exhibit 79 was marked for identification.)

Q (BY MS. SINGER) Ms. Burtle, you have in front of you Plaintiffs' Exhibit 79. Do you recognize this document?

A I recognize what it is.

Q And what is Plaintiffs' 79?

A It's a summary of document hits from 2003 to 5/6/08.

Q And when you say "document hits," those are --

A In EReserves.

Q Okay. So those would be the annual hit counts for the EReserve system for those years?

A For the active pages in the EReserve system for each of those years.

Q Okay. To the best of your knowledge, are these figures accurate?

A I have no reason to think they aren't.

Q Okay. Do you know who compiled this report?

A No.

Q Do you know why it would have been compiled?

A No. It appears to be looking at trends, but I -- I don't have any recollection of it, so if there's -- yeah, I don't know.

Q As part of your responsibilities, do you look at trends in the usage of the EReserve system?

A Not on a regular basis, but if I had questions about whether it was still useful, I would take a look.

Q Do you believe that EReserves is still useful?

A Yes.

Q And Plaintiffs' 79 shows that for 2007, there was 259,691 hits for the active pages in EReserves?

A Correct.

Q And then the figure for 2008 is 95,007, but that is a partial year; is that correct?

A Correct.

Q So the final number of hit counts for the year 2008, we presume would have been greater than 95,000?

A Yes.
Q Okay.
MS. SINGER: I'm -- if you would please mark as Plaintiffs' Exhibit 80 a document bearing the Bates stamp Georgia State 3610.
(WHEREUPON, Plaintiffs' Exhibit 80 was marked for identification.)
Q (BY MS. SINGER) Ms. Burtle, you have in front of you a -- an exhibit marked Plaintiffs' Exhibit 80. It's an email to you from Marjorie Denise Dimsdale dated April 21st, 2008. Do you recognize this document?
A I don't recall it, but I see what it is.
Q And what is Plaintiffs' 80?
A It appears to be a response to a question I asked about features in ERes.
Q Do you recall asking -- do you recall why you asked about the ERes features?
A No. No, I don't.
Q Okay. And Ms. Dimsdale replies in Plaintiffs' 80, "There are an awful lot of features about ERes that we are not using." Do you know what she -- what did you understand that to mean?
A That there are features we aren't using.
Q Okay. Do you know what those features are?

A Well, she says here a lot of them have to do with copyright options. Beyond that, I don't know. I know ERes has options for faculty to fax something in and post it directly, which we don't use. It's the only thing I can think of. I'm sure it has other features that I don't know about.

Q Okay. Did you have occasion to look into using these copyright options?

A I recently looked at the screens that have these.

Q And what did -- what did you see when you looked at those screens?

A That they were not integrated with the rest of the system and were not helpful for posting EReserves.

Q Did you make a decision about whether to use any of these additional features or not?

A At this point, I decided we didn't need to be using those.

Q Okay.

MS. SINGER: If you would please mark as Plaintiffs' Exhibit 81 a document with the Bates number Georgia State 3160.

(WHEREUPON, Plaintiffs' Exhibit 81 was marked for identification.)

Q (BY MS. SINGER) Do you recognize Plaintiffs' Exhibit 81?

A It's an email I sent.

Q And Plaintiffs' 81 is an email from you to Denita Hampton and Denise Dimsdale dated April 17th, 2008, asking where the 20 percent came from. What was the 20 percent to which you were referring?

A Our guide -- our library guidelines at that point said that we would digitize up to 20 percent of the book.

Q Okay. And then you go on to say, "I only see the one chapter stipulation in the Regents' guideline." What did you mean by that?

A I had assumed all of our practices were based on the Regents' guidelines that were in existence at that time and I didn't see the 20 percent there, so I wanted to know where it came from.

Q And did you get a response to Plaintiffs' Exhibit 81?

A Yes, I believe you have that.

Q Okay.

MS. SINGER: Well, let's do this: If you would please mark as Plaintiffs' Exhibit 82 a document bearing the Bates stamp Georgia State 860.

(WHEREUPON, Plaintiffs' Exhibit 82 was marked for identification.)

Q (BY MS. SINGER) Plaintiffs' Exhibit 82 is an email from Marjorie Denise Dimsdale to you dated April 21st, 2008, with the subject "Info tidbit."

A Um-hmm.

Q And in it, Ms. Dimsdale says to you, "I'm going through school by school to find info for you regarding 20 percent and continued use."

A Yes.

Q What -- what sorts of information did she find for you regarding 20 percent and the continued use?

A There's an email somewhere where she sent me a number of schools that did have the 20 percent. I don't recall about continued use. We had verbal discussions where she indicated that at the time the reserve system was set up, which was before I was involved in it, they had done a scan of the environment and that was kind of a standard that was seen out there, that she didn't have documentation of that.

Q Okay. And she also says in Plaintiffs' 82, "I believe that it is probably common practice for other schools to scan this material for ERes," I assume meaning the sentence before, interlibrary loan or --

what is GIL Express items?

A GIL Express is a book borrowing service between University System of Georgia libraries.

Q Okay. She says, "I think that most schools do not consider whether or not they own the original item to affect fair use." Do you know what she meant by that?

A I know what she means by "scan ILL or GIL Express," that we -- you know, if we don't own it, we don't scan it and put it on reserve. I don't know where she's making that assumption from, though.

Q Do you -- do you have any basis with which to agree or disagree with that assumption?

A No. I would find it surprising, but I don't have any factual knowledge of it.

Q Okay. You would find it surprising that other libraries do scan it?

A Yes.

MS. SINGER: And if you would please mark as Plaintiffs' Exhibit 83 a document bearing the Bates stamp Georgia State 932.

(WHEREUPON, Plaintiffs' Exhibit 83 was marked for identification.)

Q (BY MS. SINGER) Do you --

(Whereupon, there is a discussion off the record.)

Q (BY MS. SINGER) Ms. Burtle, do you recognize Plaintiffs' Exhibit 83?
A Yes.
Q And what is Plaintiffs' 83?
A It appears to be an email that Denise sent me in response to my question of April 17th on -- on the 20 percent rule. It's not exactly an answer. I asked where the 20 percent came from and she responded with the current practice that she found.
Q Did you ever get an answer to the question on where the 20 percent came from?
A That's the thing I told you she verbally told me.
Q Okay. Aside from Plaintiffs' -- the emails of Plaintiffs' Exhibit 82 and eighty -- Plaintiffs' 83, do you recall any other written communications regarding the 20 percent rule?
A I don't recall any, no.
Q Okay. What is the status of the 20 percent rule today?
A We no longer use the 20 percent rule.
Q Has the 20 percent rule been replaced by anything?
A It's been replaced by the faculty doing an analysis of fair use using the checklist. And if they

determine it to be fair use, we accept it, unless it sets them off an alarm and...

Q Okay. Is it your testimony, then, that the 20 percent is still used as -- as some kind of informal alarm threshold for the library?

A Not officially, I wouldn't be surprised if people who are used to the 20 percent are sensitive to that amount and it sets off an alarm for them, but it's certainly not something we instruct.

Q Okay. When the 20 percent rule existed prior to the new policy, who was responsible for enforcing the 20 percent rule?

A Denise Dimsdale was the first level of responsibility for that and handled most of the issues.

Q And what did handling the issues entail?

A Telling the faculty no.

Q Do you have a sense of how often she had to tell faculty no?

A No, I don't.

Q Did she ever escalate to you or to anyone instances in which the -- the faculty pressed even after they were told no?

A I don't recall any instances.

Q Okay. And if we look back at Plaintiffs' 81, it says, "20 percent. I only see the one chapter stipulation." Was there a one chapter stipulation at Georgia State University prior to the new policy?

A Yes, one chapter or 20 percent.

Q How did that work, what if it was three chapters, but only 18 percent of a work?

A Say that again.

Q How -- what was the relationship between the 20 percent and the one chapter? For instance --

A It -- it could be greater than one chapter if it was less than 20 percent.

Q Okay. And what if it was one chapter, but it was a short work that only had four chapters, so one chapter was 25 percent of the work?

A I don't know. By this guideline, it would have been the one chapter was done, but I don't know if the practice differed from that.

Q Okay. Did the -- what did --

A I want to amend that.

Q Please.

A I don't think they ever went over 20 percent.

Q Okay. How did the -- the 20 percent or one chapter -- how was that applied? Was that applied to just work by work? So, what I'm trying to ask is, if a professor had 20 different excerpts and they wanted to use them in four classes, did -- would you look at the

20 percent of the particular work for each of those classes -- strike that.

Did you have any rules about how -- whether a professor could post 20 percent of a work -- if -- if they wanted to post a different 20 percent of a work, they were teaching two classes in a semester, and they wanted to post 20 percent of a work for one class and a different 20 percent of the work for a different class they were teaching in the same semester, how would you have applied the 20 percent rule?

A We only looked at an individual course page. So if there were multiple sections of a book on an individual course -- individual course page, we would look at the cumulative effect, but not between course pages.

Q Okay. Thank you. I'm sorry, that was a bit of a tortured question.

MS. SINGER: If you would please mark as Plaintiffs' Exhibit 84 a document bearing the Bates stamp Georgia State 904.

(WHEREUPON, Plaintiffs' Exhibit 84 was marked for identification.)

Q (BY MS. SINGER) Do you recognize Plaintiffs' Exhibit 84?

A It's an email from me to several people about

BOR guidelines.

Q And BOR is Board of Regents?

A Correct.

Q Okay. So the subject of P84 says, "BOR says continued use is okay." And you write, "Yeah, I think the concern here is the Board of Regents' guideline as much as our practice." What -- what concern were you referring to there?

A The Complaint.

Q Okay. And you say, "A lot of schools pay a royalty after the first semester, but I don't see on what basis. Maybe some sort of case law." What were you referring to there?

A The various guidelines about fair use and educational fair use, I didn't see where this practice was based.

Q Did you do any research or ask anyone to do any research into where that paying a royalty after the first semester might have come from, the basis?

A Yes.

Q And what did -- what research did either you do or you ask to have done?

A I just looked around different Websites and different pieces of the -- the law, and the only location I identified, that was the CONFU guidelines that were never actually enacted seemed to be where people got that from, but I didn't see any official law or agreement that ever indicated that.

Q Okay. As we sit here today, do you have an understanding of the basis for which other schools would pay royalties after the first semester?

A Well, I think our following CONFU guidelines didn't -- don't get -- have any issues, but I don't -- I still don't see -- a fair use analysis might indicate that you have a problem, you should pay a royalty; and that's certainly one of the factors to consider, but it's not the only factor, so I don't know that that's a black and white question. It's going to vary from case to case.

Q Do you believe that should be a factor that Georgia State professors consider when they're doing their fair use analysis?

A It's part of the checklist, so certainly.

Q Okay. And just to be clear, the Board of Regents' guideline that we're talking about here is what you referred to, I believe, earlier this morning as having been superseded and no longer in effect; is that correct?

A Correct.

MS. SINGER: If you would please mark as

Plaintiffs' Exhibit 85 a document bearing the
Bates stamp Georgia State 772.
(WHEREUPON, Plaintiffs' Exhibit 85 was marked for identification.)
Q (BY MS. SINGER) Ms. Burtle, do you recognize Plaintiffs' Exhibit 85?
A It's an email from me to Charlene Hurt.
Q And it's -- Plaintiffs' 85 is dated May 5th, 2008, the subject is, "Another fair use statement." What were you referring to there?
A I don't recall specifically, but given the date, I assume I was looking at what other schools had on their Websites about EReserves --
Q Okay.
A -- or about fair use.
Q And you say in Plaintiffs' 85, "Not specific to EReserves but I like Principal 1, fair use is both technology and medium neutral." What do you like about that statement?
A Reserves is reserves, and the fact that it's online doesn't make it not reserves. It's still reserves and it's still fulfilling the same function it always fulfilled.
Q Do you believe that print reserves and EReserves should be treated the same way in terms of

copyright?

A I think primarily, yes, they're both subject to fair use analysis. Print reserves it comes up less because we're not taking pieces and parts, it's a whole book being checked out that falls under regular library practice that's, you know, existed for centuries, but, yeah.

MS. SINGER: If you would please mark as Plaintiffs' Exhibit 86 a document bearing the Bates stamp Georgia State 920.

(WHEREUPON, Plaintiffs' Exhibit 86 was marked for identification.)

Q (BY MS. SINGER) Do you recognize Plaintiffs' 86?

A It's an email from Terrence Manion to me.

Q And this Plaintiffs' 86, this email dated 4/30/2008, subject Re: Law Library EReserve statement. And we see at the bottom of Plaintiffs' 86, earlier in the chain, Terrence Manion sending an email to you on April 28th, 2008 attaching a statement concerning the law library EReserve policy and procedures. Do you see that?

A Yes.

Q Do you know why Terrence Manion came to send you the law library EReserve policy on April 28th?

A My assumption is that I asked him for it.
Q Okay. And then you, in the return email dated April 30th, 2008, ask him to provide you with the rationale behind paragraphs 2, 3, and 5.
MS. SINGER: And in order to make this easier, why don't we mark, if you would, please, as Plaintiffs' Exhibit 87 a document bearing the Bates stamp Georgia State 669.
(WHEREUPON, Plaintiffs' Exhibit 87 was marked for identification.)
Q (BY MS. SINGER) Do you recognize Plaintiffs' Exhibit 87?
A It appears to be the policy referred to in the email in 86.
Q Okay. And so you're asking -- in Plaintiffs' 86, you're asking him for the rationale behind paragraphs 2, 3, and 5. So paragraph 2 of Plaintiffs' 87 talks about presented with article citations or PDF documents, they will search Westlaw, Lexis, or Hein Online for links to the articles and then post the links to the appropriate course page. Do you see that?
A Yes.
Q Is that the -- is that the library's -- your library's current policy?

A Current policy?

Q Yes.

A Yes.

Q Was that your --

A Well, not Westlaw, Lexis.

Q Well, not Westlaw, Lexis, right. But to -- if it -- if the article citation exists in an electronic form. At the time of Plaintiffs' 86 and 87, so that's April 2008, was that your library's policy?

A No.

Q Okay. Paragraph 3 of Plaintiffs' 87 says, "When presented with pages from a book, we will continue to post them unless they are for multiple chapters of the same book. If multiple chapters from the same book are requested, we will purchase the book, request copyright clearance, and then post the requested pages. Once we have received clearance, pages from multiple chapters of the same book will not" -- all caps -- "be posted in the EReserve system unless copyright clearance is obtained. Instead, the book will be placed on physical reserves located behind the reference desk." Is that your library's current policy?

A No.

Q Was that your library's policy in April of

2008, at the time this document was sent?

A No.

Q Okay. And by "your library," I'm just trying to distinguish from the law library.

A I understand.

Q I don't -- I don't mean to imply anything else.

Paragraph 5 of Plaintiffs' 87 says, "Finally, all materials will be deleted from the EReserve system one week after the conclusion of the relevant semester's exam period."

Was -- is that your library's current policy?

A Well, as I told you before, I'm not sure exactly what the timing after the semester is.

Q Sure.

A But we do delete by putting them in the archive, delete from active use.

Q Okay. And was that your library's policy in April or early May 2008?

A Yes.

Q Okay. In Plaintiffs' 86, in response to your request for clarification, Terrence Manion writes, "We link into Westlaw or LexisNexis rather than post an article or case in EReserves in part because it pushes the copyright issues onto the legal research service, but a larger part of that decision is those research services allow students to print to dedicated printers for free." Do you see that?

A   Um-hmm.

Q   Were either of those rationales considered in your library's decision to change its policy?

A   No.

Q   Okay. In the third paragraph of Plaintiffs' 86, Terrence Manion writes, "As for why we purchase the book if we post a chapter, make a book available on physical reserves rather than EReserves if multiple chapters are requested, and delete materials after the semester, while those decisions are governed by the guidelines, an argument can be made that the guidelines" are -- "are irrelevant because the publishers have never agreed to them, but in the absence of other guidance, we have applied the guidelines here."

Do you know what guidelines he was referring to?

A   I believe he identifies those in the first paragraph. CONFU and AALL.

Q   Okay. And those would be the same guidelines that you -- that we talked about a little bit earlier?

A   Not AALL. That's the American Association of

Law Libraries, so we don't have anything to do with that.

Q That's not your problem, okay. But the CONFU guidelines are the same ones we discussed earlier?

A Yes.

Q Okay. And then in Plaintiff 86, Terrence Manion writes, "I have always been curious if doing so has led to greater copyright problems, as faculty who are frustrated or are unhappy with our practices post material themselves, completely taking the library out of the loop. We do not actively inspect law classes to see where and what they are posting, but if word gets to us, we will address it."

Do you have any concern that faculty -- GSU faculty who are frustrated or unhappy with the library's practices may post materials themselves?

A I have no way of knowing if they would do that.

Q Do you have any concern that they might?

A I would be concerned if faculty aren't following the policy that the Board of Regents has mandated.

MS. SINGER: Are we good or do -- okay.

Q (BY MS. SINGER) On Plaintiffs' 87, at the bottom there, it says, "my response to you, not to him." Do you know who the -- the "my" of "my response" might be?

A No, I don't even know who -- no, I don't.

Q Okay. So, that's not you?

A Give me a minute to look at all of this.

Q Okay.

A It would appear to be me, although it's not completely clear. I don't know who this was -- who this was addressed to. And the font is weird, I don't use that font so -- but --

Q Okay.

A -- it's probably me. But I can't swear to that.

Q Do you know who you might have been talking to when you say "to you, not to him"? It says, "my response to you, not to him." Do you know who the "to you" might have been?

A If it is, indeed, my response --

Q Um-hmm.

A -- it was most likely my boss, Charlene Hurt.

Q Okay.

A But since I don't know if it was my words...

Q Fair enough. Where it says the multi -- I'm sorry, Plaintiffs' 87, at the very bottom, it says, "The multiple chapters I would be okay conceding, although I don't like it," emoticon smiley face. Do you know if that -- would you be okay conceding multiple chapters?

MR. ASKEW: I'll object to the form of the question, it's vague.

THE WITNESS: Conceding multiple chapters to what?

Q (BY MS. SINGER) In the context -- would you agree with the statement, "The multiple chapters I would be okay conceding, although I don't like it"?

A The multiple chapters is irrelevant under our new policy because it's a fair use analysis that I'm not in the position to concede anything one way or the other.

Q Okay. One last question, and then we'll take a break to change the tape, just clean up.

Terrence Manion, M-A-N-I-O-N, is the director of IT and instructor of law and a librarian at Georgia State University College of Law?

A Correct.

MS. SINGER: Okay. Why don't we take a break so we can change the tape.

THE VIDEOGRAPHER: Off the record at 2:03:51.

(Whereupon, there was a brief recess.)

THE VIDEOGRAPHER: This is Tape 5. We are back on the record at 2:17:08.

MS. SINGER: Okay. If you would please mark as Plaintiffs' Exhibit 88 a document bearing the Bates stamp Georgia State 38881.

(WHEREUPON, Plaintiffs' Exhibit 88 was marked for identification.)

Q (BY MS. SINGER) Do you recognize Plaintiffs' Exhibit 88?

A It's an email from Nancy Seamans to me about a University System of Georgia Webcast.

Q Do you recall whether you were able to attend the University System of Georgia Webcast referenced in Plaintiffs' 88?

A No, I did not attend this.

Q Okay. Do you know whether anyone from your staff attended?

A I don't know.

Q Okay.

MS. SINGER: If you could please mark as Plaintiffs' Exhibit 89 a document bearing the Bates stamp Georgia State 38883.

(WHEREUPON, Plaintiffs' Exhibit 89 was marked for identification.)

Q (BY MS. SINGER) Do you recognize Plaintiffs'

Exhibit 89?

A Give me a minute to read this.

Q Sure, take your time.

A I kind of recall it. I do recognize it. It's an email from Nancy Seamans to me about audio and video materials.

Q Okay. Plaintiffs' 89, Nancy Seamans writes to you at the top of the first page, "Laura, to provide a specific example, Jan is interested in using Eyes on the Prize as part of a hybrid class that he will be teaching in the spring. Who supports him in this, permissions, digitizing, server space, et cetera, and probably a conversation would be easier than an email." Do you see that?

A Yes.

Q Did you subsequently have a conversation with Ms. Seamans?

A I don't recall.

Q Okay. Who would support Jan for permissionS?

A I don't know.

Q Who would support him on digitizing?

A I believe Mike Russell's unit.

Q Okay. And who would support him for server space?

A That would be IS&T.

Q Okay. I am handing you what's been marked as Plaintiffs' Exhibit 17. And that is a PowerPoint entitled "Copyright in Instruction and the New USG Copyright Policy," dated February 23rd, 2009. Do you recognize Plaintiffs' 17?

A Yes.

MR. ASKEW: Do you know which deposition this was first used in? Was it Potter or Seamans?

MS. SINGER: Nan Seamans, my learned colleague tells me.

Q (BY MS. SINGER) Have you seen Plaintiffs' 17 before?

A Yes.

Q When was that?

A This is the PowerPoint that accompanied the training on the new copyright policy that I attended.

Q Okay. Do you -- I don't recall if we discussed the date. Would February 23rd, 2009 have been the date you attended the training?

A It seems reasonable.

Q Okay. So this would have been before -- you would have received this training before you went to the RACL meeting and presented the policy to the other librarians?

A Yes.

Q Okay. Directing your attention to the page bearing the Bates stamp 21128. The second bullet point says, "Tools to assist in copyright and fair use analysis: See fair use checklist."

What was your understanding of what tools are available to assist in copyright and fair use analysis?

A The fair use checklist.

Q Anything else?

A Well, legal counsel, when needed.

Q Okay. So other than legal counsel and the fair use checklist, are you aware of any other tools that are available to assist in copyright and fair use analysis?

A I'm not aware of any.

Q Okay. And the copyright and fair use analysis would be performed by the faculty; is that correct?

A The faculty or whoever at the university was responsible for that, so it could be their graduate assistant or something like that.

Q Okay. Somebody on the instructional side as opposed to the library, though?

A Yes.

Q Okay. And the fourth bullet point on page

21128 says, "Individuals to counsel faculty and staff: Office of legal affairs, others." What's your understanding of who the individuals who will counsel are?

A Currently, they are all people in the office of legal affairs.

Q Okay. When you say "currently," are you aware of any plans for there to be other people other than the office of legal affairs to counsel individuals?

A To counsel individuals?

Q Yeah.

A Not at this time, no.

Q Okay. If you would turn to page 21131, it's a statement of fair use. Do you see that?

A Yes.

Q Prior to this training, did you have an understanding of what fair use was?

A A general understanding, yes.

Q And what was your general understanding?

A Well, there's four factors that are considered.

Q Okay. Do you know what those factors are?

A Off the top of my head, I'll have to think a moment. The nature of the work, nature of the use, I believe the amount of the work, and the market effect of the work.

Q Okay. Had --

A But I would use the checklist if I were going to actually do that.

Q Fair enough. Did this training change your understanding of what -- of the concept of fair use at all?

A No, not this training.

Q Okay. Did there come a time when your understanding of what fair use is changed?

A I learned more about fair use when I began doing a lot of research following the filing of the complaint.

Q So that would have been April of 2008-ish?

A And subsequently.

Q And subsequently, okay.

Do you know whether this PowerPoint, Plaintiffs' Exhibit 17, is the same PowerPoint that's used for training faculty members?

A I don't know.

Q Okay. And this training, I believe, is the one you testified took about two hours?

A Yes.

Q Okay. Okay. Let's look at the -- the fair use checklist we've been talking so much about. I believe it has been previously marked as Plaintiffs' Exhibit 15, but because the version that was marked as Plaintiffs' Exhibit 15 apparently was filled in, we're going to mark it again as Plaintiffs' Exhibit 90.

(WHEREUPON, Plaintiffs' Exhibit 90 was marked for identification.)

MR. ASKEW: Can you identify for me the source of this copy, is this one you-all made?

MS. SINGER: No, I believe -- yes, I will -- I will represent to you that what has now been marked as Plaintiffs' Exhibit 90 is a version that I downloaded from the University System of Georgia Website yesterday afternoon.

MR. ASKEW: Are you going to give it a document production number, or has it been given a document production number?

MS. SINGER: It's an excellent question. I will look into that for you, but for now, we'll mark it as Plaintiffs' Exhibit 90.

Q (BY MS. SINGER) This is somewhat disingenuous having heard my explanation, but do you recognize Plaintiffs' Exhibit 90?

A Yes.
Q And what is Plaintiffs' Exhibit 90?
A This is the fair use checklist provided by the Board of Regents.
Q Okay. Have you had occasion to review this checklist prior to today?
A Yes.
Q And what did that review entail?
A Reading it, making sure I knew what the different items, different factors meant.
Q You've taught classes at GSU; is that correct?
A Yes.
Q Are you currently teaching any courses?
A No.
Q Okay. When was the last time you taught a class at GSU?
A I believe 2005. I'm not certain.
Q Did you utilize ERes to post course readings for your course?
A I don't -- I don't recall that I did. I'm not certain.
Q What course did you teach?
A Most frequently I taught a course called World Hunger Perspectives 2002. It was team taught.

Q Okay. And was perspectives the department that it was offered in or the type of course, what is perspectives?

A It's part of the general education curriculum. It's a type of course.

Q Okay. And who did you team teach that course with?

A Mildred Cody.

Q What department is Mildred in?

A Nutrition.

Q What -- what was the nature of the required reading for that class, by which I mean, did you have a textbook, did you have a Coursepack?

A The required reading for this course was all items that were available freely on the Internet.

Q And how did you communicate to the students which items available they should read?

A The syllabus.

Q So the syllabus just listed URLs or something like that?

A Correct.

Q Do you have any plans to teach that course again in the future?

A No.

Q Is that course still offered?

A I don't know.

Q So let's look at Plaintiffs' Exhibit 90. The instructions say, "Where the factors favoring fair use outnumber those against it, reliance on fair use is justified. Where fewer than half the factors favor fair use, instructors should seek permission from the rights holder.".

So that's fewer than half the factors, so that would be if only one factor is in favor of fair use, one or none?

A That would be fewer than half.

Q Okay. And then, "Where the factors are evenly split, instructors should consider the total facts weighing in favor of fair use as opposed to the total facts weighing against fair use in deciding whether fair use is justified."

What do you understand would be involved in considering the total facts?

A For each factor, the facts are the check boxes underneath or -- the facts determine how the check boxes underneath are checked.

Q Okay.

A Is that your question?

Q Yes. So Factor 1, "the purpose and character of the use," in the "weighs in favor of fair use" column, it says, "nonprofit educational." Do you see that?

A Yes.

Q Can you think of any situation in which a faculty or instructor at Georgia State University would not check the box nonprofit educational?

A No.

Q Okay. Next to that, in the "weighs against fair use" column of Plaintiffs' Exhibit 90, it says, "commercial activity."

Can you think of a -- any case in which a Georgia State University professor or faculty member would ever check commercial activity?

A I'm going to say no, but I want to qualify that.

Q Sure.

A In the context of EReserves.

Q Sure, sure.

A What they do outside of EReserves could vary.

Q Of course. We'll -- we'll -- we can stipulate that all of my questions are meant to be in the context of EReserves.

A Okay.

Q Can you -- do you think any of the factors in the weighs in favor of fair use category are more important or less important? Do you have a -- do you have an opinion about which of the factors in the weighs in favor of fair use column are most important, or are they all equal?

A There's not an indication that anything is more important than anything else in the facts under the factor.

Q In your opinion, though, are any of them more important, or are they all equally important?

A I think they're all important.

Q Okay. So you think you would weigh all of the factors in the weighs in favor of fair use column equally?

A Generally speaking. I don't think they're all equally relevant for EReserves.

Q Okay. In the context of EReserves, do you believe they're all equally important?

A Well, EReserves is not multiple copies for classroom use, so that would not be as important.

Q Okay.

A Personal study, that would be important, in the context of EReserves, if it's for personal study, it doesn't -- it's not course -- it's not an appropriate use of EReserves, so, no.

Q Okay. So you're interpreting personal study as not being -- who's -- strike that.

Who is the -- who is the person in personal study?

A That's --

Q In your opinion?

A It's the student --

Q Okay.

A -- for the purpose and character of the use because the use is a student using this in a course.

Q So when the professor is filling out the fair use checklist, who -- who should the professor consider the -- the personal study to be?

A I can't make sense of the question in the context of -- of EReserves.

Q Okay. Does this fair use checklist give any guidance as to the meaning of any of the factors that are listed? Does it provide -- does it provide any explication of who the person in personal study would be, for example?

A No, I don't believe it does. The checklist does not, no.

Q Okay. Do you know if there's any tools available to GSU faculty members that they -- if they wanted help in understanding who the person in personal study was, how would they get that information?

A Legal.

Q Okay. Let's say in filling out this checklist, let's say we're talking about, I don't know, we'll take Blassingame's slave -- the slave -- I don't remember the title -- Slave Community work. Let's say I am a -- I'm teaching African-American family and I want to post six chapters from the Blassingame slave game work, okay? How -- can you run through the checklist, can you help me think through the checklist how to apply that? Would that be not profit educational use? I'm a professor at GSU and I want to use six chapters from Blassingame's slave game.

A Yes.

Q That would be nonprofit. It would be -- what about the factor teaching, including multiple copies classroom use?

A I'm -- I'm not the faculty, so I assume the faculty is teaching, but --

Q Okay. How about research or scholarship?

A I don't know what the goal of the use of the work is for the learning outcomes for the class, so I don't know if the goal was for research or scholarship or not.

Q Okay. Let's take another example, then. You're teaching -- let's say you're teaching

Perspectives World Hunger again for spring -- I'm sorry, summer 2009 and you want to post four chapters from an anthology that includes readings on hunger. Would you consider that to be nonprofit educational use?

A Yes.

Q Okay. Would you consider that to be teaching, including multiple copies for classroom use?

A Yes.

Q Would you consider that to be research or scholarship?

A It would depend on what I wanted the students to do with it, but most likely I would expect them to be doing research and something scholarly with what I was asking them to read.

Q That would be the hope and the intention, right?

Would you consider it to be criticism, comment, news reporting, or parody?

A It would depend on what my outcome was.

Q Okay. What about would you consider posting six chapters from the anthology to be transformative?

A No.

Q Okay. Would you consider it to be personal study?

A No. Still not sure what that means.

Q Okay. Would you -- let's say you've -- you've looked at this and you've decided the use is necessary to achieve your intended educational purpose. How would you -- let me change my question.

How would you decide whether the use was necessary to achieve your intended educational purpose?

A I would use my knowledge of the discipline and the book and what works are out there to determine whether it was necessary.

Q Okay. What if you looked at it and you said, "Gosh, probably I could get away with only using four chapters, I don't need all six chapters," and so that factor weighed against fair use, okay? You would get a check for use exceeds that which is necessary to achieve your intended educational purpose? Are you following me?

A Say -- say it again.

Q Let's say you checked the first -- one, two, three, four, five -- six factors in favor of fair use.

MR. ASKEW: Just a second, two, three, four -- you've just gone through it and she didn't do that.

MS. SINGER: Okay.

MR. ASKEW: You're asking her to

change -- because she didn't check
transformative, she didn't check personal
study, she's not sure about criticism.
MS. SINGER: Okay. Well, let's -- let
me change my hypothetical, then.
MR. ASKEW: All right.
Q (BY MS. SINGER) Let's assume you checked all six factors, okay?
A Okay.
Q And then --
MR. ASKEW: There's seven. I'm -- I --
there's seven there, which six did you think
she --
MS. SINGER: The first six, which is
what I meant when I said "the first six."
Q (BY MS. SINGER) So let's assume you checked the first six factors under "Purpose and character of use" in Factor 1 on Plaintiffs' Exhibit 90, okay?
A Okay.
Q But then you look at it and you say, "Six chapters is really too many, I don't need all six chapters to achieve my intended educational purpose.".
So in the column "weighs against fair use," you check the last factor, "use exceeds that which is necessary to achieve your intended educational

purpose." Do you see that?

A Yes.

Q How would you then, at the end of the day, weigh Factor 1, if you have the first six boxes checked in "weighs in favor of fair use" column and the last box in the "weighs against fair use column" checked?

A It's hard to know that without knowing why I would want someone to read six chapters if it's more than I need to -- to achieve my intended educational purpose, so I would ask myself why I'm doing that.

Q Okay. Say you just liked -- you came up with a reason, that, you know, it wasn't absolutely necessary, but they were useful and they provided good information and you decided you were going to offer them anyway, how would Factor 1 come out?

A It would weigh in favor of fair use.

Q Okay. Can you think of -- before we turn the page, any -- in the context of EReserves, can you think of any -- the situation in which you might check the profiting from use box?

A No.

Q Can you think of any context in which you might check the entertainment box in the context of EReserves?

A Theoretically, yes.

Q Okay. How about the nontransformative box; do you think you would check that in the context of EReserves, is there any situation in which you can imagine checking that?
A Yes.
Q Okay. How about for publication in the context of EReserves?
A No.
Q How about for public distribution in the context of EReserves; would you ever check that box?
A No.
Q In your opinion, is it important to have factors that you would never check in the context of EReserves listed?
A For the checklist, it's because this is not only for EReserves.
Q What else is this checklist designed to be used for, to the best of your knowledge?
A Any faculty use of published material.
Q Okay.
A Or not -- any university use.
Q Fair enough.
Okay. Let's look at page 2 of Plaintiffs' Exhibit 90. It says, "Factor 2, the nature of the copyrighted work."

Are there -- are you aware of any instances in which unpublished works have been posted on EReserves?

A Yes.

Q Okay. Are you aware of any instances in which consumable works, workbooks or tests, have been posted to EReserves, copyrighted consumable works?

A I'm not aware one way or the other.

Q Is there a policy one way or the other about posting consumable works?

A I don't know that there is, we certainly don't purchase them for the library, so it's unlikely we ever would post them, since we don't purchase them.

Q Okay. In -- in my example, you're -- let's say you're posting the four chapters that you think are absolutely necessary of the anthology for your perspectives in world hunger course. How would we apply the checklist then, would that be a published work?

A Yes.

Q Okay. It would be a factual or a nonfiction work?

A In this circumstance, yes.

Q Okay. And it would be important to your educational objectives?

A Yes.
Q Okay. Can you think of any situation in which a faculty member would post something to EReserves that's not important to their educational objective?
A I hope not.
Q Okay. "Factor 3, the amount and substantiality of the portion used." In the -- the first column in "weighs" in fact -- "in favor of fair use," it says "small portion of work used." Do you see that?
A Yes.
Q What's your understanding of what a small portion would mean?
A Not a substantial bit of the -- of the book or of the work.
Q Do you have any understanding of what that means, not a substantial portion?
A I think it varies from work to work. It plays into the next one as well.
Q And by "next one," you mean "portion used is not central or significant to the entire work as a whole"?
A Um-hmm.
Q Okay. The last factor in that column,

"amount taken is narrowly tailored to educational purpose, such as criticism, comment, research, or subject being taught." Do you see that?

A   Yes.

Q   Can you imagine any circumstance in which a professor or faculty member is trying to post something to EReserve that would not be narrowly tailored to the educational purpose?

A   No.

Q   Okay. Are all the factors or all of the -- all three items listed in Factor 3 in the weighs in favor of fair use column of the checklist, are all those equally important in the context of EReserves?

A   Yes. I think in that case, I would say yes.

Q   Okay. How about in Factor 2 in the "weighs in favor of fair use" column, are all three of those factors equally important in the context of EReserves?

A   I'm not sure I can say that about Factor 2 because the published or unpublished is a -- is a question that depends on the work very highly.

Q   How does it depend on the work?

A   Faculty members often have unpublished works that they want their students to read.

Q   So how would that affect whether or not -- how you weigh the factor?

A The -- the factor is important. No, I think they are equally important. My concern is -- is faculty owned copyright, in which case this isn't necessary anyway.

Q Okay. How about Factor 4, "the effect on the market for the original"; do you believe that all of the factors listed to consider for Factor 4 are equally important?

A You'll have to give me a moment to go through them.

Q Sure, take your time.

A So can you repeat your question?

Q Do you believe that all of the individual factors listed under Factor 4 are of equal importance?

A I think it will depend on the work, they potentially are.

Q Okay. The first entry in the column "weighs in favor of fair use" under Factor 4 says "no significant effect on market or potential market for copyrighted work." What do you understand that factor to mean?

A That using this work does not affect the overall market for the work.

Q So in the hypothetical where you're posting four chapters from the anthology for your world hunger course, how would you evaluate whether there's a significant effect on the market?

A Well, is the book available?

Q Yes.

A Is there licensing? I mean, I think these all play together to determine that. They're not -- the questions underneath often -- the factors underneath often determine the factor at the top.

Q Okay. So if licensing is available for it?

A Is it something that is widely used?

Q Yes.

A I mean, these are the questions that --

Q Sure.

A -- I would --

Q Sure.

A -- ask myself.

Q Okay.

A I'm not -- I'm not asking you for answers necessarily.

Q No, no, no. I'm pretending I'm you and I'm --

A Okay.

Q -- answering them --

A Okay.

Q -- for purposes this question.

A Without the work in front of me and knowing --

Q Right.

A -- the context and the discipline, it's hard to know, but --

Q Of course.

A -- these are the kinds of things that I would consider.

Q Of course. So what if you determined that it was still in print, there was licensing available?

A Again, it would just depend on how -- is this the kind of work that people would purchase -- purchase widely minus it being available on ERes, minus it being made available in whatever I'm doing with it.

Q So are you saying that what you're looking at is would students purchase the work if you hadn't made those four chapters available?

A Well, not my particular students, but students in general. Is this something that many people purchase?

Q How is the --

A Is the market -- is the market rich, are there lots of -- is it widely available and widely used?

Q How would you use that information in making your analysis?

A Well, if it is, then I do think it would probably have a -- potentially have an impact.

Q Am I understanding you to say -- I want to make sure I understand. Are you saying that if it's a rich market, there's a lot of people who purchase the book, posting, say, four chapters that you've determined to be necessary to your educational purpose, would that have an effect on the market or -- a significant effect on the market?

A It could, but I think it depends on my use. I mean, the market is a rather broad category.

Q How -- how would you define the -- the market as it's used in Factor 4 here on the fair use checklist?

A The overall purchasing power or the overall use -- paying for the book, the entire work overall in its -- in its published form.

Q And by whom would you include, who would be the potential purchasers?

A Library, student, faculty members, people who think this is a fascinating subject.

Q Would you include licensing as well as purchasing?

A Licensing is a narrow -- narrower issue, if you're not affiliated with a -- I think it's unlikely a random person out there would license access to a piece of a book.

THE COURT REPORTER: Say that again for me, please.

THE WITNESS: It's unlikely that a person just unaffiliated out there in the market generally would purchase a licensed piece of a book.

Q (BY MS. SINGER) Okay. Would you think that a university use -- might a university -- strike that.

Are there any circumstances under which you can imagine that a university would take a license for a -- a piece of a published book, would license the use?

A A university?

Q Um-hmm.

A Sure.

Q Okay. So would, then, licensing be a potential -- part of the potential market?

A Yes.

Q Okay. And if you were to decide that it was to put this -- these four chapters on EReserves, do you think that that would have a -- a significant effect on the potential market?

A I can't answer yes or no without a work in front of me that I know the market for.

Q Okay. What if -- what if every faculty member -- how many -- we've said about a thousand faculty members, is that --

A It's an approximation.

Q Approximately. If all thousand faculty members at Georgia State University fill out this checklist for every single one of their readings and they all determine that all of their readings are fair use, do you think that would have a significant effect on the market?

MR. ASKEW: I'll object to the form of the question as vague. Market for what?

MS. SINGER: Market as the term is used in Plaintiffs' Exhibit 90, which is the University System of Georgia's checklist.

MR. ASKEW: Are you telling me that all thousand members of the faculty are going to be looking at the same work in their analysis? That's why understand your question.

MS. SINGER: Well, I'm not telling you anything.

MR. ASKEW: I've made the objection.

MS. SINGER: I'm asking her a question.
MR. ASKEW: I'm just telling you I think it's vague.
THE WITNESS: Can you ask the question again, please?
Q (BY MS. SINGER) Sure. Let's say that for all -- all 4,000 works that are currently on EReserves, okay, approximately 4,000 excerpts that are currently on EReserves, okay?
A Okay.
Q The professors -- we're going to repeat the semester and they're going to do the fair use -- they're going to go through the fair use checklist for every single one of those works, which they need to do under the new policy, correct?
A Correct, well, for things that they don't own the copyright, but --
Q For things -- okay. Let's say there's 4,000 works and the professors are all going to do the fair use analysis on them and they're going to determine that every single one of those 4,000 uses qualifies as fair use. Do you think that would have a -- an significant effect on the market or potential market for copyrighted work?
A But you have to look at it on the individual

item one by one, and it may or may not, depending on how it's used, how many students are in the class, how -- you know, I don't think you can look at it as a whole because this is a case-by-case basis.

Q So do I understand you to be saying, then, that as long as each case-by-case use is determined to be fair use, it doesn't matter if nobody ends up buying the textbook ever again because every single individual person has determined it to be fair use?

A Well, textbooks aren't generally put on reserve because they're required reading of the whole thing, but if you're speaking of supplemental readings, yes, that's what I'm saying.

Q Okay. Would you -- do you have a view on the ability of a faculty member who has not yet received the training or has not studied the literature on fair use very extensively, do you think they're able to perform a meaningful analysis of these factors?

A It would depend on the faculty member, some yes, some no. I think most faculty members, if they didn't know what they were doing, would seek advice before they did it.

Q Okay.

MS. SINGER: If you would mark as Plaintiffs' Exhibit 91 a document bearing the

Bates stamp Georgia State 928.
(WHEREUPON, Plaintiffs' Exhibit 91 was marked for identification.)
Q (BY MS. SINGER) Do you recognize what's been marked as Plaintiffs' Exhibit 91?
A Yes, it's information sent to me from Denise Dimsdale.
Q Okay. And this is an email dated May 8th, 2008, with the subject "some answers." Do you see that?
A Yes.
Q Okay. And we see the first line of Plaintiffs' 91 is Denise saying she's still looking into how many of the books on EReserve have 20 percent posted versus less than that. Do you see that?
A Yes.
Q Do you know whether she was ever able to figure out a way to answer that question?
A I don't recall ever receiving an answer to that, but I may just not recall.
Q Fair enough. Okay. And then it's -- the next paragraph of Plaintiffs' 91 says, "How many items are on reserve the spring semester 2008? The library posted about 367 course pages containing about 4,300 items." Do you see that?

A Yes.
Q Does that number -- has that been consistent, to the best of your knowledge, for the period you've been responsible for EReserves?
A I have not looked at the numbers prior to the complaint being filed, but I have no reason to think differently, but I do not know.
Q Okay. And then it says, "Of those, how many are not actively for a class, but posted for a professor to look at?" What -- what -- what did you mean by that when you asked the question?
A She told me verbally that sometimes they will renew a page so a professor can see what they had on reserve when they're planning their next semester. So I asked her is that something that happens all the time, or is that just an occasional thing, and that was the response.
Q Okay. Is it your understanding that under the new policy, will that occur?
A No, it will not.
Q Okay. One, two, three -- the fifth paragraph down on Plaintiffs' Exhibit 91, towards the end of the paragraph, it says -- they're talking about needing to use an original item and not scanning anything that comes -- "looks like it came from ILL or GIL Express,

we will not scan it." And she says in the middle of that paragraph, "I think that part of the idea behind this seem to be that we are not offering anything on ERes that we would not have offered on physical reserve if ERes didn't exist." Do you see that?

A Yes.

Q Do you agree with that statement?

A Yes.

Q Okay. "But we are more limiting with ERes." Would you agree with that statement?

A Yes.

Q Okay. "Also, by owning the original item, we have paid for some copyright use." Do you see that?

A Yes.

Q What's your understanding of what copyright use has been paid for by owning the original item?

A Libraries have a -- a section in copyright law that allows them to buy an item and lend it out to multiple people, buy once and lend multiple times.

Q Okay. And then it says in Plaintiffs' Exhibit 91, "We are willing to post material that does not feet our fair use guidelines if the instructor brings a detailed permission letter from the copyright holder or a receipt showing that licensing to make the item available on ERes was paid, but the instructors just say never mind when we ask for this." Do you see that?

A Yes.

Q Okay. And then she -- the next line is -- I assume it's your question, "Are many of the books on ERes from the reference collection?" Is that your question?

A Yes.

Q And the answer was, "No, approximately 1 percent." What -- where would the other 99 percent of the books on EReserve have come from?

A The general collection, the circulating collection.

Q Oh. Okay. Am I understanding, then, that there's a difference between the reference collection and the general collection?

A Yes.

Q And what's -- how would you characterize that difference?

A Reference collection is -- is books like encyclopedias, directories, reference books.

Q Okay. And those are books that someone can't come into the library and check out if they wanted to?

A Correct, they are inhouse use.

Q Is that -- is the reference collection different from the print reserves that we talked about before? I think you said there were three shelves of books behind the counter that the professors would put on reserve. Is that different than the reference collection?

A Yes.

Q Okay. In the last paragraph on the -- on Plaintiffs' 91, it says, "Instructors are not allowed to manage their own EReserves page. We experimented with allowing instructors to manage their pages without about five instructors back when we first started using the system." And that -- that was before your -- before you had responsibility for the ERes system, right?

A Yes.

Q Okay. And then she goes on to say in Plaintiffs' 91, "It wasn't working out very good, as they wanted to just post anything." Do you see that?

A Yes.

Q And so she says, "We took away the access from all of the experimental professors except for Professor Eilertson. She made a fuss about not being able to manage her own page and Liz Bagley said it would be a good idea to go ahead and let her do it, but keep an eye on her pages." Who is Liz Bagley?

A She was my predecessor over that area before I was.

Q Is she still at Georgia State University?

A No.

Q Do you know when she left?

A I believe she left probably -- no, I don't know.

Q Okay. Have you ever had occasion to look at Professor Eilertson's course reserve pages?

A No.

Q Do you have any understanding of whether she still has control over her pages?

A I instructed Denise to take away her control.

Q And why was that?

A I did not want any faculty member to have different -- different privileges than any other one.

Q Okay. If the library now is not doing any -- it's not applying the -- the 20 percent or one chapter rule, if the library -- let me ask you this: Is -- is the library relying entirely on the professor having gone through the fair use analysis and using the fair use checklist to determine what's appropriate to post on their EReserve page?

MR. ASKEW: I'll object to the form of the question as vague as to "relying entirely." What do you mean by that?

THE WITNESS: No, not entirely.

Q (BY MS. SINGER) Okay. What other factors does the library look at before deciding whether to post something to a professor's course reserves page?

A As I told you earlier, they do a gut check, you know, this doesn't feel right, this seems like too much, and they will refer it to me or to legal.

Q Is there any reason under the new policy not to allow professors just to post whatever they want to the library -- to the -- I'm sorry, to their course reserve page?

A Yes.

Q And what's that reason?

A Because they need to post things that are eligible to be posted under one of the criteria that we have identified, fair use or they've paid...

Q But if the professors are making that determination themselves anyway, why can't they then just post it to the course reserves page after they've made that determination?

A Well, in many cases, we scan the item for them, would be one reason. We also find the link for them, would be another reason. We like the gut check kind of -- of response. We also organize the pages for them. We do a lot of work to make the material easier to read -- easier to use for the student, that faculty don't do and then we end up with the upset students.

Q But if you had a very technically savvy faculty member who was able to organize it very well and -- and was able to do their own scanning or find their own links, is there any reason why they shouldn't be able to post it -- they shouldn't be able to post things to their own course reserves page?

A I don't know enough about all the steps involved and all the mechanics to answer that. Theoretically, I suppose not, but I don't see it happening.

MS. SINGER: Are we -- how are we doing on tape? Okay. Why don't -- this is actually a good point, why don't we take a break for a few minutes and let me get my notes together, because I think we've probably got another half hour, 45 minutes.

THE VIDEOGRAPHER: Off the record at 3:08:05.

(Whereupon, there was a brief recess.)

THE VIDEOGRAPHER: This is Tape 6, we are back on the record at 3:26:34.

MS. SINGER: Okay. If you would please

mark as Plaintiffs' Exhibit 92 a document
bearing the Bates stamp Georgia State 21184
through 21196.

(WHEREUPON, Plaintiffs' Exhibit 92 was marked for identification.)

Q (BY MS. SINGER) Do you recognize Plaintiffs' Exhibit 92?

A Yes.

Q Okay. Can you -- can you tell me what we're looking at with Plaintiffs' 92?

A This is the first run at revising our EReserves or our reserves Web pages.

Q Okay. And when you say "first run," were there subsequent -- subsequent -- I don't want to use the word attempts, but subsequent changes made to the --

A Yes, this is not the final version.

Q Okay. Thank you.

So you started -- it looks like the date on the first page of Plaintiffs' 92 is an email from you dated February 11th, 2009. Does that sound about right from when you might have started this?

A Probably a few days before then, but yes.

Q Okay. Okay. Fair enough. The second page of Plaintiffs' 92 with the Bates stamp 21185, which the title at the top says, "Electronic Reserves Request Form." Which version are we looking at here? Is this --

A What do you mean?

Q -- the current version, is this an interim version, is this what's on the Website today?

A No, this was never on the Website.

Q This was never on the Website, okay.

So this -- what is the second page of P92?

A This is a draft during the process we went through updating our reserves pages.

Q Okay. The third page of P92, it says, "Georgia State 21186." In the first number there, it says, "Check to see if the library already has a license for the electronic version by using the electronic journal locater or GIL for a book. If you would like help determining if an item is licensed, please send the citation to mailto:libreserves" -- L-I-B-R-E-S-E-R-V-ES -- at landscape -- "langate.gsu.edu." Do you see that?

A Yes.

Q Is that section that I just read currently on the Website?

A I don't know if it's word for word identical, but something similar.

Q Okay, something like that in concept.
My question is, who answers the email address libreserves@langate.gsu.edu?
A That goes to the members of the reserves department.
Q Okay.
A For this particular item, this particular number, if they have difficulty with that, they send it back up to me and I will either try to find it myself or I will send it to the subject liaison that's responsible for the databases and journals in that area and may have a better sense of how to find something.
Q Okay. And so that's currently the email address to which questions about whether the library has an electronic version of something are directed at?
A If it's an EReserves question.
Q EReserves question, sorry. Thank you.
If you turn a little bit later in Plaintiffs' 92 to the page that has the Bates stamp 21191. It looks to be a redline of some kind?
A Yes, it does.
Q Do you know what -- what you were redlining against, what was the original that you were creating the redline off of, do you know, do you recall?
MR. ASKEW: I'll object, it assumes

facts I don't think are in evidence as to
whether she was the one that did this
redline.

THE WITNESS: I'll affirm I did do this
redline, I'm almost certain. And I believe
it's the old reserves page.

Q (BY MS. SINGER) Okay. And the -- the markup here is -- again, is -- is this what's on the Website today, or this was an interim version that never appeared --

A This is an interim version, I don't know exactly how it compares to what's on the Website today.

Q Okay. Okay. We can put that exhibit aside, then.

MS. SINGER: If you would please mark as
Plaintiffs' Exhibit 93 a document bearing the
Bates stamp Georgia State 21231.

(WHEREUPON, Plaintiffs' Exhibit 93 was marked for identification.)

Q (BY MS. SINGER) Do you recognize Plaintiffs' 93. Take your time to look at it, if you need to.

A Yes.

Q What is Plaintiffs' 93?

A It is Nancy Seamans' response to my request for her edits to the draft version.

Q Okay. How can we tell on Plaintiffs' 93 which comments are -- are yours and which comments are her response?

A I don't know that you can.

Q Okay. Who -- you see in the margins of P-93, at the very beginning there, there's a -- it says, "Comment D1, maybe always capitalize reserve or never capitalize reserve." Was that her comment?

A Yes.

Q Okay. And just to make sure I understand, Plaintiffs' 93 is Nancy Seamans' response to your redline in Plaintiffs' 92?

A Yes, 92 and 93 are working versions --

Q Okay.

A -- not final versions.

Q Okay.

MS. SINGER: If you would please mark as Plaintiffs' Exhibit 94 a document bearing the Bates stamp Georgia State 21157 through 21158.

(WHEREUPON, Plaintiffs' Exhibit 94 was marked for identification.)

Q (BY MS. SINGER) Do you recognize Plaintiffs' Exhibit 94?

A It appears to be a forwarded email exchange that I -- yeah, between directors at Georgia State, Georgia Tech, and University of Georgia, and was sent to me and it was sent to Kristen Swift.

Q Okay. Do you see about -- about a third of the way down the page on Plaintiffs' 94, Nancy Seamans, 2/17/2009, it looks like it's addressed to you, it says, "Laura, I think that it is Bob Fox that Catherine tapped to work with you on this. Let me know if you want to talk about it. I'm inclined to postpone working on what you've pulled together until after you've run it by Bob and Viki, but would also be glad to explain to both of them what I'm asking for. Thanks."

Is that an email that was -- are you the Laura to whom that is addressed?

A Yes.

Q Okay. What is it that you've been tapped to work on here?

A Revising our Web pages. The directors at Georgia Tech, University of Georgia, and Georgia State decided it would be nice for all of us to revise our Web pages together, which later expanded to the entire RACL, so this was the initial phase of that.

Q Okay. Is this related to the committee that you are going to be chairing or --

A The committee that I'm going to be chairing will probably have these people on it. This predated that.

Q Okay. Who is Bob Fox, do you know?

A He is the associate director at Georgia Tech, associate library director at Georgia Tech.

Q Is he your -- roughly your counterpart at Georgia --

A Roughly.

Q And who is Catherine?

A Catherine is the director at Georgia Tech.

Q Is Catherine roughly Nancy Seamans's --

A Yes.

Q Okay. Have you met with Bob Fox on -- to talk about coordinating the Web pages?

A Not physically.

Q Have you had any conversations with Bob Fox about coordinating your Web pages?

A I believe he forwarded this on to one of his employees, and there's been minimal conversation -- or exchange about their Web pages.

Q Okay. Are you -- I'm not sure how the membership works. Are either you or Georgia State University a member of any library trade associations or trade organizations?

A Yes.
Q Does membership in those trade organizations run to the individual or run to the library, do you know?
A It varies from organization to organization.
Q Okay. What -- which organizations are you a member of?
A Me personally?
Q Yes, let's start with that.
A The American Library Association, the Association of College and Research Libraries, and the Georgia Library Association.
Q Are there any additional library trade association-type organizations that Georgia State is a member of?
A The Association of Southeastern Research Libraries.
Q Okay.
A OCLC.
Q What does OCLC stand for?
A It's a library organization. It doesn't stand for anything anymore.
Q Okay.
A It used to stand for Ohio something, but that's not part of its name anymore.

Q Okay.

A Center for Research Libraries, SOLINET, S-O-L-I-N-E-T.

Q What is SOLINET?

A SOLINET is also a library cooperative.

Q Have you had conversations with the members of any of these organizations about this lawsuit?

A Not beyond if members of the -- if representatives from those organizations were at that RACL meeting.

Q Okay.

MS. SINGER: Let's mark as Plaintiffs' Exhibit 95 a document bearing the Bates stamp Georgia State 773.

(WHEREUPON, Plaintiffs' Exhibit 95 was marked for identification.)

Q (BY MS. SINGER) Do you recognize Plaintiffs' Exhibit 95?

A Yes.

Q What is Plaintiffs' Exhibit 95?

A It's an email to me -- from me to Mary Ellen Davis at ALA.

Q And ALA is the American Library Association?

A Correct.

Q Okay. And this is an email dated May 21st, 2007.

A Yes.

Q Okay. So that's before the lawsuit was filed, right?

A Correct.

Q Okay. And the subject of Plaintiffs' 95 is, "APA EReserves complaint." And you write, "Mary Ellen, Prue Adler will be contacting you about this, but in case she hasn't, I wanted to alert you about the APA EReserves complaint." And APA would be the -- the Publishers Association?

A Correct.

Q "They sent a letter threatening a lawsuit over electronic reserves to six schools. Four of those are ARL libraries." What does ARL stand for?

A The Association of Research Libraries.

Q Okay. Was that one of the organizations we just talked about?

A No, we do not belong to the Association of Research Libraries.

Q Okay. Why not?

A We are not big, powerful, and rich enough.

Q Fair enough.

So, "Four of those are ARL libraries, Duke, Syracuse, Texas A&M, and Florida. One is as yet unidentified and the other is Georgia State." Did there come a time when you were able to identify that sixth school?

A Yes.

Q Do you recall who it was?

A I believe it was Marquette, but I'm not certain.

Q Okay. "The attorneys from the schools and ARL are in contact with each other, as well as Mary McDonald, who handled the situation at UCSD." What is UCSD?

A University of California San Diego.

Q And what was the situation at UCSD that you referred to in Plaintiffs' 95?

A I believe AAP filed suit against them for copyright infringement.

Q Okay. "The belief is that AAP are trying to get a nationwide guideline on EReserves modeled on Cornell's. Of course, we don't want to see that happen." Why don't you want to see that happen?

A My understanding of the Cornell model is that it does not take into account the validity of fair use.

Q And how did you develop that understanding about the Cornell guideline -- or the Cornell model? I'm sorry.

A It's been widely discussed in the library literature.

Q And then you say in Plaintiffs' 95, "I'm sure Prue will update you on this at the ARL meeting." Now, who is Prue Adler?

A Prue Adler works at the Association of Research Libraries.

Q Did you have conversations with Prue Adler about this lawsuit?

A Yes.

Q How many conversations, approximately, have you had with Prue Adler about this lawsuit?

A I don't know.

Q More than three?

A Probably three -- three to five.

Q Over what time period did those conversations with Prue Adler occur?

A Well, let me clarify what you mean by "this lawsuit."

Q The Complaint -- when you answered the question, what did you understand me to mean by "this lawsuit"?

A I was initially contacted by Prue Adler when this threat was made by APA.

Q Okay.

A I have spoken to her in regards to that --
Q Okay.
A -- in consultation with the other schools. I've also spoken to her since the current Complaint was filed.
Q Okay. I want to be sure I understand you. Prue Adler contacted you in approximately the time frame of Plaintiffs' 95, so that's approximately May 2007 --
A Yes.
Q -- give or take?
And what did Prue Adler say when she contacted you that first time in May-ish 2007?
A I don't remember exactly. It was a phone call. But generally, that she was aware that we had received a threat of a lawsuit and that other schools had also and we were not alone and that they were all talking together and the lawyers were all talking together.
Q Did you have any subsequent conversations with representatives from any of the other schools?
A There were a couple of conference calls.
Q Okay. Do you recall approximately how many conference calls there were?
A A couple is the best I can do.

Q Okay. And approximately what time frame were those couple of conference calls?

A Around this time.

Q Did the conference calls go on for -- how long did the conference calls go on for? I'm looking for months, weeks, what was the time period over which those conference calls took place?

A I don't remember exactly, but they were not extensive. Certainly a month or two, maybe.

Q Okay. What was -- what was the substance of the discussions on those conference calls?

MR. ASKEW: Just a second. Did you say these were conference calls with lawyers about these lawsuits?

THE WITNESS: There were lawyers and librarians on the conference calls.

MR. ASKEW: I think these parties had a common interest, Ms. Singer, and I'm going to object based on privilege.

MS. SINGER: I respectfully disagree with that, but I -- are you going to instruct her not to answer if I --

MR. ASKEW: Well, as I understand it, she's on a call with several lawyers representing other schools that have been threatened with a lawsuit. And they're discussing these matters. And it seems to me like those kind of calls would be normally considered privileged, as these parties are all being threatened and they have a common interest among themselves with respect to defending against these lawsuits.

MS. SINGER: Are -- are you going to instruct her not to answer questions?

MR. ASKEW: Well, are you going to pursue this question? Are you going to ask her what the substance of these -- I'll go to talk to her for a few minutes, if you want me to see if I can find out if there's anything there but -- and then we can discuss it, if you want to.

MS. SINGER: Why don't we --

Q (BY MS. SINGER) Before we do that, were there any lawyers representing Georgia State University on those calls?

A Not the calls that I was on.

Q Okay.

MS. SINGER: Okay. Why don't we take a break, then, and let's see if we can cut through this. I appreciate that.

THE VIDEOGRAPHER: Off the record at
3:46:21.
(Whereupon, there was a brief recess.)
THE VIDEOGRAPHER: Back on the record at
3:48:45.
MR. ASKEW: I'm not going to instruct
her not to answer the question. You can
proceed.
MS. SINGER: Okay.
Q (BY MS. SINGER) What -- what was the
substance of the -- the conference calls in the May
2007-ish time frame regarding the -- the draft
complaints you had received?
A Just general discussion about our current
practices, what system do you have, what system do you
have, you know, have your legal people been involved,
what -- you know, what's going on, nothing -- I don't
remember any of the specifics.
Q Okay.
A Supportive phone calls.
Q Did you report on those -- those calls to
anyone at GSU?
A Legal.
Q Legal?
A (Nods head affirmatively.)

Q Okay. Did you discuss or report those calls to anybody else at GSU besides legal?
A Not that I recall.
Q Okay.
A Other librarians.
Q At GSU or outside of GSU?
A My boss.
Q Okay. When was the next time that you spoke to Prue Adler?
A Oh, I have no idea.
Q Did you speak to Prue Adler after this series of conference calls?
A Yes.
Q Okay. And what was the substance of those conversations?
A I believe there was a conversation where she told me how some of the different schools had responded to the letter.
Q Do you remember what she told you about how the other schools had responded to the letter?
A Not specifically, no.
Q In general, what was the substance?
A I recall education campaigns, that's the main thing I remember her telling me about, some schools were doing internal training as we're doing now.

Q What steps did GSU take after receiving that letter in the May 2007 time frame?
A Legal assessed our situation and responded to the letter.
Q Did the library take any steps?
A No.
Q Did you have any conversations with Prue Adler after she told you how the other schools were responding?
A Yes.
Q And when was that?
A I called her when this complaint was filed to let her know what was going on.
Q And what was the substance of that conversation?
A "We've been sued."
Q And what was her reaction?
A She wanted to know the details.
Q What did you tell her?
A I sent her a link to where the Complaint was posted online.
Q Did you have any other conversations with her?
A We have had periodic conversations, just what's going on sorts of things, but I can't give you

the details of them at all. I don't recall.

Q Okay. Have you had any conversations with any of the other five schools that received the same draft letter complaint in 2007?

A No.

Q Are you aware of any steps taken by any of those schools beyond what Prue Adler communicated to you?

A No.

Q Without -- well, let me ask this as -- as a first question: Was the -- are you able to tell me anything about the library's decision not to take any action following receiving the draft complaint in 2007? Are you able to tell me anything that wouldn't involve legal advice or consultation with legal?

A No.

Q Okay. Do you know whether anybody else from GSU talked to Prue Adler?

A I know Nan Seamans has spoken with her. I don't know if Charlene Hurt spoke with her or not. I was the primary person she spoke to.

Q Is Georgia State University receiving any kind of support from the ARL with respect to this lawsuit?

A No.

Q Okay.

MS. SINGER: Let's mark as Plaintiffs' Exhibit 96 a document bearing the Bates stamp Georgia State 671 through 675.

MR. ASKEW: So this is going to be, what, 96?

MS. SINGER: 96.

(WHEREUPON, Plaintiffs' Exhibit 96 was marked for identification.)

(Whereupon, there was a discussion off the record.)

Q (BY MS. SINGER) Ms. Burtle, do you recognize what's been marked as Plaintiffs' Exhibit 96?

A Yes.

Q What is Plaintiffs' 96?

A It's a compilation of information that I made.

Q Okay. Which -- what information did you compile?

A Primarily information about fair use, different library statements, library association statements and library statements on electronic reserves.

Q Do you know approximately when you compiled this information?

A No, but I compiled a lot of information in the months after the lawsuit was filed, so somewhere in there.

Q Okay. So you think this was after the lawsuit was filed?

A Yes.

Q Okay. What caused you to compile the information in Plaintiffs' Exhibit 96?

A Find out what's out there.

Q Did anyone ask you to compile this information?

A Not that I recall.

Q Did anyone help you compile it?

A Not that I recall.

Q What did you do with the information that you've compiled in Plaintiffs' 96, if anything?

A I believe I shared it with my boss.

Q Other than sharing it with your boss, do you know if anything was done with the information in Plaintiffs' 96?

A I don't believe so.

Q Okay. The first line, or the title, really, of Plaintiffs' 96 says, "ARL Statement," and then in parentheses, "(Laura's emphases)".

A Yes.

Q Are we able to tell from Plaintiffs' 96 what your emphases are, is there font different or --

A It looks like the bottom two bullet points are -- are bolded.

Q Okay. And you believe that that was your emphasis?

A Yes.

Q Okay. Why did you choose to emphasize those last two bullet points?

A They seemed relevant to the lawsuit.

Q Relevant in what way?

A Without infringing copyright, the public has the right to expect to have made -- to make or have made for them a first generation copy for personal use of an article or other small part of a publicly marketed, blah-blah-blah, or work in a library's collection. They're relevant to reserves, they're relevant things I found interesting.

Q Okay.

A And this wasn't used to create anything. Things I found interesting.

Q Sure. Sure. Do you believe that posting something on EReserves is the same as making or having made a first generation copy for personal use?

A No.

Q Okay. On page 2 of Plaintiffs' 96, it says, "Georgia State 672." There's -- two of the four bullet points at the top are also in bold italics. Are those your emphases as well, do you know?

A That would be my assumption.

Q Okay. And the fourth bullet point at the top of the second page of Plaintiffs' 96 says, "Libraries, on behalf of their clientele, should be able to avoid liability after posting appropriate copyright notices for the unsupervised actions of their users." Do you see that?

A Yes.

Q Do you -- did you believe that that was relevant to the lawsuit or to EReserves?

A Yes.

Q How was that relevant?

A I believe there was an implication in the complaint that people just made copies and sent them to all their friends.

Q And making copies and sending them to their friends, would that constitute unsupervised action of the users?

A Yes.

Q Does the library, in fact, post appropriate copyright notices as part of EReserves?

A Yes.

Q How is that -- how are those copyright notices posted?

A When a student clicks on an item, they are presented with a copyright notice that they have to read, put in the password for the page, and then click accept.

Q And are they presented with that page -- when are they presented with that page, is it every time they access the system?

A Yes.

Q Is it before each work that they access, for instance, if they go to a course reserves page, and they access the first reading and then they go back to the page and access the second reading, will they be presented with the appropriate copyright notice?

A I'm not sure of the flow of that.

Q Okay. What is the -- the substance of the copyright notice that EReserves users are presented with?

A Oh, I can't quote it to you, but it's the standard copyright notice that's seen everywhere on photocopy machines and -- it's standard language of -- I can't tell you what it says off the top of my head.

Q Okay. Does it reference that the specific work is copyrighted, or is it about -- that the specific work that the user is about to access is copyrighted, or is it just a general notice about complying with copyright?

A I don't know.

Q Okay.

A I'd have to look at it.

Q Okay. At the bottom of the second page of P96, we see the title is "ALA Statement," do you see that?

A Yes.

Q What is the ALA?

A American Library Association.

Q Okay. And is this a statement that you took from the American Library Association's Website?

A Yes.

Q Do you have any -- did you add any emphasis to this section that you --

A It doesn't look like it.

Q Okay. The third page of Plaintiffs' 96 says, "Fair use analysis from the IUPUI." Do you see that?

A Yes.

Q What is the IUPUI?

A Indiana University, Purdue University, Indiana -- Indianapolis, I think, something like that.

Q And they abbreviate that? Is that a --

that's a specific university --

A Yes.

Q -- that you took that from? Okay.

And it says, "Laura's comments in blue." Are you able, as you look at this photocopy, to tell which your -- which were your comments?

A No, I'm not.

Q Okay. Me neither. I was hoping you could help me.

Okay. If you look at the fourth page of Plaintiffs' 96, it says, "UW Madison libraries policy for electronic reserve access to copyright-protected materials," again, "Laura's emphases." Do you see that?

A Yes.

Q Is this the -- again, a -- a single university or a University System policy?

A Yes.

Q Okay. And are you able to tell what was your emphasis?

A There's a bolded paragraph towards the end, I believe that was my emphasis.

Q Okay. Okay. You'll be very happy to hear the last exhibit.

MS. SINGER: If you would please mark as

Plaintiffs' Exhibit 97 a document bearing the
Bates stamp Georgia State 7483 to 7485.
(WHEREUPON, Plaintiffs' Exhibit 97 was marked for identification.)
Q (BY MS. SINGER) Do you recognize Plaintiffs' Exhibit 97?
A Yes.
Q What is Plaintiffs' 97?
A It's a draft memo from Prue Adler to the directors of the ARL libraries.
Q Did Prue Adler send you a copy of this draft memo?
A Yes.
Q Okay. Do you know approximately the date of this memo?
A No.
Q Okay. You see about a third of the way down the page of -- first page of Plaintiffs' 97, it says, "Wednesday, May 21st, ARL public policy session, fair use working group." Do you see that?
A Read it to me again, I'm sorry.
Q It's -- it's the heading, "Wednesday" --
A Oh, yes.
Q -- "May 21st, ARL public policy session, fair use working group"?

A Yes.
Q Were you present at that public policy session of the fair use working group?
A No.
Q Okay. Was anyone at GSU invited to be present there?
A No.
Q Okay. And it says -- on Plaintiffs' 97, it says, "Situation at GSU, glitch in the system meant that reserves were wide open, allowed AAP to see what was being provided. Patched the system, but when contacted about the numbers, pushed back and said they were in compliance. Some question about who from the university and/or library was working with the AAP. Feeling that there was some information that could only have come from someone at the institution. Original letter to GSU included commercial publishers, but not included in the lawsuit."
Was that information that you communicated to Prue Adler?
A Presumably.
Q Would you agree with the statement that there was a feeling that there was information that could only have come from someone at the institution?
A There was a suspicion of as much, never any

proof.
Q Okay. Was any investigation done?
A No.
Q Okay. Next paragraph of Plaintiffs' 97 says, "Prue has talked with Laura at GSU about how to handle this, Laura Burtle." That's you, right?
A Yes.
Q Okay. "Apparently there is no one in the GA AG's office who feels qualified to handle the lawsuit, so have talked with Prue about identifying other lawyers who are qualified to represent GSU. Counsel from ARL libraries who have pushed back as a resource. University attorney Kerry.
Did Prue ever help you identify other lawyers who might be qualified to represent GSU?
A I don't believe that I was involved in those conversations.
Q Okay. So you -- okay.
A couple more lines down on Plaintiffs' 97, it says, "More discussion of AAP long-term looking for an opportunity to attack the Regents copyright policy. Saw it as pushing the boundaries." Do you see that?
A Yes.
Q Was that your general sense of what AAP was looking to do? Was --

A I believe it was the sense of legal.
Q Okay. Was that a conversation that -- did you discuss what AAP was long-term looking to do when you spoke to Prue Adler?
A No.
Q Okay. The next line on Plaintiffs' 97, it says, "AAP's deliberate use of Coursepacks terminology, equating Coursepacks with EReserves even though they are not." Do you believe that Coursepacks and EReserves should be equated?
A No.
Q Why not?
A They're not the same.
Q Why not, how are they different?
(Whereupon, there was an outside interruption.)
THE WITNESS: One is a commercial enterprise; one is a university providing information it purchased to its own students.
THE COURT REPORTER: What, I'm sorry?
THE WITNESS: Sorry, where -- where did you miss from?
MR. ASKEW: Would you reask that question. I heard her shout something from down there, and I don't know that I heard the

answer.

MS. SINGER: Yeah, and you can't read it back, can you? Are you able to read back that question?

THE VIDEOGRAPHER: Off the record at 4:08:07.

(Whereupon, there was a discussion off the record.)

THE VIDEOGRAPHER: Back on the record at 4:09:14.

MS. SINGER: If you would, could you read back the last question and the last answer.

(Whereupon, the record was read by the court reporter as follows:

"QUESTION: Why not, how are they different?

"ANSWER: One is a commercial enterprise; one is a university providing information it purchased to its own students.")

Q (BY MS. SINGER) Are there any other differences between Coursepacks and EReserves?

A Yes.

Q What else?

A Well, fair use is rarely going to come into play in a commercial Coursepack situation, it is something to be considered in almost all course -- EReserve situations.

Q Okay. Anything else?

A Anybody can purchase a Coursepack, if they so desired. EReserves are limited to students enrolled in a course.

Q Okay. Does the university -- I'm sorry, does Georgia State University provide any Coursepacks itself, or are they all through commercial copy shops?

A I believe we covered that earlier, where I indicated I think Jim Palmour's shop might still provide a few Coursepacks, but I am not in a position to know that for sure.

Q Okay. If, indeed, Jim Palmour's shop still provides Coursepacks, would you consider those to be commercial?

A Yes.

Q Why is that?

A They're sold.

Q Okay. Back to Plaintiffs' Exhibit 97, it says -- about three-quarters of the way down the first page of Plaintiffs' 97, it says, "UCSD pushed back successfully. Who is the UC lawyer? Prue indicated GA GSU should be talking with her."

Did Prue indicate that to you, or do you -- was she indicating that --

A I think these are her notes to herself, these are not my notes, so...

Q Okay. So you didn't have any discussions with her about who the UC lawyer was?

A Not that I recall.

Q Okay. And on Plaintiffs' 97, the next line, where she says, "Strategy should be to address how AAP is defining fair use," did you have a conversation with her about that?

A No, these are her notes.

Q Okay. The next page of Plaintiffs' 97 has the Bates stamp Georgia State 7484. The fourth paragraph down says, "Let faculty get in trouble. They have clout that libraries do not have. They'll be the ones who connect the dots between NIH, provosts' open access letter, CMSs course reserves. Move to a negotiation between faculty, authors, and publishers and get libraries out of the middle."

Did you have any conversations with Prue Adler regarding the concept of letting the faculty getting -- get in trouble?

A No.

Q Do you believe that faculty have clout that libraries do not have?

A Yes.

Q And what's the basis for that belief?

A They get the money, and we don't.

Q What is NIH, if you know?

A National Institutes of Health.

Q Okay. And what is provost open access letter?

A I don't recall which provosts, but some provosts have issued statements that they expect their faculty to publish materials in open access sources.

Q And in that context, what would open access mean?

A Things that are available usually online, without charge to the user, to the viewer.

Q Okay.

A The reader.

Q So, in other words, the reader, the user would not have to pay licensing fees?

A Right, or purchase the journal.

Q Or purchase the journal. Okay. Do you know what CMS's refers to?

A Well, it could be content management system or course management system.

Q Okay. Was there any sense at Georgia State

University that pushing the fair use analysis to the faculty instead of the library would -- would somehow protect the library?

A I don't think I can answer that for the university as a whole.

Q Okay. Did you have any sense, personally?

A I was never involved in that kind of conversation --

Q Okay.

A -- personally.

Q Okay. Fair enough.

MS. SINGER: I think if we can take a short break, I can put my notes in order and see if I have any last questions.

THE VIDEOGRAPHER: Off the record at 4:14:22.

(Whereupon, there was a brief recess.)

THE VIDEOGRAPHER: Back on the record at 4:22:31.

Q (BY MS. SINGER) Okay. Ms. Burtle, just directing your attention back for a moment to Plaintiffs' Exhibit 97. You see about halfway down the page, it says, "Madeleine, legal counsel at UVA, participating via phone, and I don't know her." The last sentence of that paragraph is, "Hard to defend

some of what GSU is doing, extremely liberal policy."
Do you see that?
A Yes.
Q Do you agree with that statement? I know it's not your statement.
A No. I -- I don't have any idea what it's referring to specifically. I can't speak to Madeleine's thoughts.
Q But do you agree that some of what GSU is doing is -- is an extremely liberal policy?
A Is now or was when this was written that was applying to the Regents copyright guidelines?
Q When was this was written applying to the Regents copy -- copyright guidelines?
A No, I don't think I would characterize it as extremely liberal, but that's a relative term. That means different things to different people.
Q Would you have characterized it as liberal?
A I don't know how to apply a word like that to this situation.
Q Okay.
MS. SINGER: Okay. I have no further questions, subject, of course, to any -- anything that may come up if Tony asks you questions.

EXAMINATION

By MR. ASKEW:

Q Would you find Exhibit 82 in your stack there, Ms. Burtle. It's a one-page exhibit.

A It's a one-page, I've got a bunch of one pages together. There were go, got it.

Q All right. This exhibit was shown to you by Ms. Singer several hours ago. The last sentence in this email reads, "I think that most schools do not consider whether or not" --

A It's not Exhibit 81.

Q Okay. Excuse me.

A Sorry.

Q It should be the next one in sequence. 82. No, it's only about three lines.

A 82, I'm sorry, my pages -- oh, that's eighty -- okay. Yes. All right.

Q Direct your attention to the last sentence of this exhibit --

A Yes.

Q -- Ms. Burtle, it reads, "I think that most schools do not consider whether or not they own the original item to affect fair use."

With respect to that sentence, I believe Ms. Singer asked you a question at the conclusion of her discussion about this exhibit to the effect that did you consider it surprising that other schools would scan it. And my recollection is your answer was yes. And I wanted you to -- if you would explain what you meant by that answer of yes to that question about whether you would find it surprising that other schools would scan it.

A I would find it surprising if other schools would scan materials they don't own, materials they got through interlibrary loan or GIL Express. Does that answer your question?

Q Yes. And you don't have to find this exhibit, but just to give you a frame of reference, with respect to Exhibit number 85, Ms. Singer asked you if print reserves and EReserves should be treated the same for copyright purposes. I believe your answer was yes, and I wondered if you could explain that answer for me further.

A Well, they both -- there are parts of copyright that affect both print reserves and EReserves so print reserves are treated like books that circulate in the library. And there's a part of copyright that allows for book to circulate out of the library to multiple students and then there are parts of copyright that apply to electronic reserves, particularly the fair use guidelines, that would apply there. So copyright applies -- it's not the same piece of the copyright law, but copyright does apply to lending books on print reserve or lending books from the library, as well as electronic reserves.

Q With respect to the fair use checklist, Ms. Burtle, are -- are there other sources of information that might aid a professor or user of the checklist for the purpose of understanding the checklist and what is being asked in the checklist?

A Other sources beyond the checklist, I mean, the policy itself explains the context of the questions that are asked in the fair use checklist, so the policy itself includes information that would be useful, in addition to legal. So if someone reads the policy, which they're expected to read the policy before they use the checklist, that's part of what they've been told to do as members of the university, they should have that context before they use the checklist.

Q Is it your understanding that it -- that it is a part of the policy that the University System expects the professor to review the entire policy and its guidelines and information as a part of reviewing and completing the checklist?

A Yes, the university sent out an email to every member of the university telling them that.

MR. ASKEW: I have no further questions for the witness.

MS. SINGER: I have just one question.

FURTHER EXAMINATION

BY MS. SINGER:

Q When Mr. Askew asked you if it was the policy to expect -- I think it was faculty or professors to review the entire policy, what do you understand the entire policy to comprise?

A The Board of Regents' copyright policy, which is on the Website, it has a number of different sections.

Q Okay.

A Introduction, it has a section on copyright generally, a section on fair use, it has a section on EReserves, so the entirety of what's on that policy.

Q Okay. Just so that we're -- just so that we're all clear -- you're not going to have in your stack Plaintiffs' Exhibit 38. Let me show you my copy of Plaintiffs' Exhibit 38.

MR. ASKEW: You go ahead and look at it, though.

(Whereupon, there was a discussion off the record.)

Q (BY MS. SINGER) Let's do this, let me give you a copy of Plaintiffs' Exhibit 21, which is a little bit harder to read, but it's screen shots. Would -- how much of -- if at all, of Plaintiffs' Exhibit 21 would you say constitutes -- what -- strike that. Let me start again.

What, if any, of Plaintiffs' Exhibit 21 would you consider to be the entire copyright policy?

A Oh, it's not the entire copyright policy by any means. It references back to the entire copyright policy.

Q Okay. Where -- where is the entire copyright policy found?

A On the Board of Regents' Website.

Q Okay. There is a section on policy on the use of copyrighted works in education and research?

A Yes.

Q There is a section on additional guidelines for electronic reserves?

A Yes.

Q There's a fair use checklist?

A Yes.

Q And there's an introduction to the fair use checklist?

A Yes.

Q Is there more to the entire copyright policy?

A I believe there is. I can't tell you off the top of my head what's missing, but I feel like that's not all of it. But I -- I'm not positive.

Q Okay.

A I know there's an introduction you don't have.

Q Is that the introduction that's actually on the -- the checklist itself?

A No.

Q Besides possibly an introduction, are there any other parts to the copyright policy, that you're aware of?

A I haven't memorized the copyright policy. I know where to go to look for it when I need it. So I feel like it's longer than that, because I handed out copies to a lot of people, and there were more pages than that, but I can't tell you specifically what's missing.

MS. SINGER: Okay. I have no further questions.

MR. ASKEW: Okay. That will conclude the deposition.

THE VIDEOGRAPHER: Off the record at 4:32:15.

(Deposition concluded at 4:32 p.m.)

E R R A T A   P A G E

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or Georgia Code Annotated 9-11-30(e), any changes in form or substance which you desire to make to your deposition testimony shall be entered upon the deposition with a statement of the reasons given for making them. To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

I, the undersigned, Laura G. Burtle, do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate with the exception of the following corrections below.

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Laura G. Burtle

Sworn to and subscribed before me

this ______ day of ______________ 2009.

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Notary Public.

My commission expires _________________

C E R T I F I C A T E

STATE OF GEORGIA:

GWINNETT COUNTY:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true and correct transcript of the evidence given upon said hearing. I further certify that I am not of kin or counsel to the parties in the case, am not in the regular employ of counsel for any of said parties, nor am I in anywise interested in the result of said case.

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This, the 30th day of April, 2009

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SHARON A. GABRIELLI, CCR-B-2002

DISCLOSURE

STATE OF GEORGIA:

COUNTY OF DEKALB:

Deposition of Laura G. Burtle

Pursuant to Article 8.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

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